

FULL COUNCIL REPORT

Date Written	20th November 2014
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Service Area	Legal / Democratic Services
Exempt/Non Exempt	Non Exempt
Committee Date	3rd December 2014

To: Mayor, Ladies and Gentlemen

AMENDMENTS TO MTCBC CONSTITUTION

PURPOSE OF THE REPORT:

To 1) confirm amendments to the Constitution following reports presented to Council in recent months; 2) to seek Councils approval for recommended amendments to the Constitution and 3) to confirm amendments to the Constitution made by the Monitoring Officer under delegated powers.

1.0 INTRODUCTION AND BACKGROUND

- 1.1 The Councils Constitution sets out how the Council operates, how decisions are made and the procedures which are followed. Some of these processes are required by the law, while others are a matter for the Council to choose. The Council's Constitution was last updated in March 2013.
- 1.2 As Members will be aware the Monitoring Officer has a duty to monitor and review the Constitution. Article 2.15.03 of the Constitution states that changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Monitoring Officer, save where authority is delegated to the Head of Paid Service or the Monitoring Officer to make any changes which are required as a result of legislative change, or decisions of the Council to enable him/her to maintain it up to date.

1.3 AMENDMENTS PREVIOUSLY APPROVED BY COUNCIL

- 1.3.1 There have been a number of reports presented to Council in recent months where the Council has resolved to amend the Constitution. These

amendments are shown in Appendix I. In this Appendix there is reference to the reports submitted to Council that recommended the changes. As these changes have already been approved by Council, they are shown for information purposes.

See APPENDIX I for changes.

1.4 **PROPOSED AMENDMENTS FOR APPROVAL BY COUNCIL**

1.4.1 The Monitoring Officer has received requests to amend the Constitution as a result of organisational changes, changes in policy/procedure and also in relation to cost savings for the Council. These are listed below.

1.4.2 **Article - 2.08.01 - Regulatory and Other Committees**

An additional licensing committee (the statutory licensing committee) was created by the Council at its AGM in May 2014 to deal with licensing applications made under the Licensing Act and the Gambling Act. All other forms of licensing will continue to be dealt with by the existing regulatory licensing committee pursuant to s101 and s102 the Local Government Act 1972. The powers delegated to this new committee must be accurately reflected in the constitution as ultimately the constitution governs how the council operates.

See APPENDIX II for proposed changes.

1.4.3 **(4.07.32) Estates, Land, Buildings & Developments - (B) Acquisition and disposal of land and buildings**

Currently the Constitution states that ***"No land or buildings shall be sold or let without receiving an opinion of value from a suitably qualified independent valuer"***.

As of Monday 29th September 2014, all legal instructions are sent to this Authority's legal department, either to be dealt with in-house or provided to external solicitors / Powys Council / other, as appropriate.

Corporate Property currently provides a full Estate Management Service, negotiating leases, licences, acquisitions, disposals encroachments etc. Several members of the team are members of the Royal Institution of Chartered Surveyors and as such are required to operate in accordance with Royal Institution of Chartered Surveyors regulations. It is usual practice in Local Authority Property Departments for suitably qualified staff to undertake valuations on behalf of the Authority as part of their professional duties.

In view of the ability of internal, qualified staff to undertake valuations on all aspects of Estate Management, in accordance with the requirements of the Royal Institution of Chartered Surveyors, it is recommended that the Constitution be amended to remove the word "independent". This provides the Authority with the ability to obtain timely internal valuation advice whilst also saving on cost.

Independent valuation advice will still be necessary in some cases, for example where the Land Transfer Protocol is being exercised or where valuations are deemed to be outside of the expertise of internal staff or potentially controversial.

It is proposed that that the Constitution be amended to remove the word “independent” to read ***“No land or buildings shall be sold or let without receiving an opinion of value from a suitably qualified independent valuer”***.

1.5 **AMENDMENTS MADE TO THE CONSTITUTION BY THE MONITORING OFFICER UNDER DELEGATED AUTHORITY REQUIRED AS A CONSEQUENCE OF LEGISLATIVE CHANGE**

1.5.1 As these changes have been already made they are shown for information purposes.

1.5.2 **Article - 5.04 – Whistleblowing Policy**

This policy has been updated to comply with the provisions of the Enterprise and Regulatory Reform Act 2013.

All public bodies are expected to have whistleblowing policies. These should foster a climate of openness and transparency in which individuals in the workplace do not feel that they will be victimised, harassed or suffer any reprisals if they raise concerns about wrongdoing within the organisation.

The Enterprise and Regulatory Reform Act 2013 has introduced some changes to whistleblowing provisions and these are summarised below.

- a) A disclosure will not be protected unless it is, in the reasonable belief of the employee or worker, in the public interest. This would generally exclude matters that can be characterised as being of a purely personal nature from the whistleblowing protections. For example, a complaint by an employee about the terms of their employment should be made using the grievance procedure, not the whistleblowing policy.
- b) A disclosure no longer has to be made “in good faith” to be protected (but an employment tribunal may reduce compensation payments to an employee or worker where the disclosure was not made in good faith). Therefore, disclosures made purely out of malice or with the intention of personal gain, for example, will be protected as long as they are made with the reasonable belief that they are in the public interest.
- c) Whistleblowers are now protected from suffering detriment, bullying or harassment from another employee. Previously, employees were protected from adverse treatment only in relation to their employer's

activity. Employment tribunals will be able to hold employees or workers personally liable for victimising a whistleblower.

- d) An employer can now be held liable (vicarious liability) for any detriment inflicted on a whistleblower by his or her colleagues. The employer would have a defence if it can demonstrate that it took all reasonable steps, such as compliance with its whistleblowing policy, to prevent such detriment.

The Whistleblowing Policy has been amended to reflect these statutory provisions updated policy – see APPENDIX III.

2.0 FINANCIAL IMPLICATION(S)

- 2.1 There are no financial implications involved in updating the Constitution. Should the Council's Constitution not be effectively revised and updated, then the constitutional position may begin to lack clarity and transparency.

3.0 SINGLE INTEGRATED PLAN AND SUSTAINABILITY IMPACT SUMMARY

- 3.1 The Single Integrated Plan and Sustainability Impact Assessment have been completed and the proposals have a positive impact on the Financial Sustainability of Public Services. No negative impacts have been identified.

4.0 EQUALITY IMPACT ASSESSMENT

- 4.1 An Equality Impact Assessment (EqIA) screening form has been prepared for the purpose of this report. It has been found that a full report is not required at this time. The screening form can be accessed on the Council's website/intranet via the 'Equality Impact Assessment' link.

5.0 RECOMMENDATION (S) that

- 5.1 The amendments to the Constitution as shown in Appendix I be noted.
- 5.2 The amendments to the Constitution as proposed in paragraphs 1.4.2; and 1.4.3 be agreed.
- 5.3 That the Constitution be amended to reflect the changes.

ELLIS COOPER
CORPORATE DIRECTOR OF CUSTOMER SERVICES

BACKGROUND PAPERS

Title of Document(s)	Document(s) Date	Document Location
MTCBC Constitution	March 2013	<u>Democratic Services</u>

Consultation has been undertaken with the Corporate Management Team in respect of each proposal(s) and recommendation(s) set out in this report.

APPENDIX I

AMENDMENTS TO CONSTITUTION – NOVEMBER 2014		
Part	Proposed Amendment	Reason for proposed amendment
<p>2.05 ARTICLE 5 – CHAIRING THE COUNCIL (THE ROLE AND FUNCTION OF THE MAYOR)</p>	<p>2.05.01 ROLE AND FUNCTION OF THE MAYOR</p> <p>The Mayor and, in his/her absence, the Deputy Mayor will have the following roles and functions:</p> <p>(a) (a) Ceremonial role. To attend such civic and ceremonial functions as the Council and he/she determines appropriate.</p> <p>(a)(b) Member dispute resolution. To participate in the resolution process as per the Local Dispute Policy agreed by the Standards Committee.</p> <p>(cb) Chairing the Council Meeting (the following, where appropriate, will also be applicable to the Deputy Mayor, in the absence of the Mayor or any other Councillor requested to Chair the meeting in the absence of either the Mayor or Deputy Mayor as approved by a majority of members voting at the meeting).</p>	<p>To comply with report to Council 4th December 2013 "Local Dispute resolution Procedure"</p>
<p>Scrutiny Committee Terms reference 2.06.01 of</p>	<p>To undertake the role of scrutinising the Merthyr Tydfil Local Service Board (LSB). Should there be occasion when the Chief Executives Scrutiny Committee deems that a subject matter relating to the Merthyr Tydfil LSB would be best dealt with by one or more of the other scrutiny committees, the matter can be referred to the appropriate scrutiny committee(s). When it is determined that an issue relating to the LSB is to be dealt with by two or more scrutiny committees, the matter should be referred to a joint scrutiny committee comprising of those committees.</p>	<p>To comply with report to Council on 23rd April 2014 – "Scrutiny of the Merthyr Tydfil Local Service Board (LSB)"</p>
<p>2.15.03</p> <p>Changes to the Constitution</p>	<p>Removal of part b)</p> <p>2.15.03 CHANGES TO THE CONSTITUTION</p> <p>(b) Power to adopt a different form of executive. The Local Government (Wales) Measure 2011 makes new provision to simplify the procedure for a local authority already operating one form of permitted executive arrangements to change to another form of executive arrangements, but enable them to make such a change only once between ordinary elections. See the Local Government (Wales) Measure 2011 for details.</p>	<p>To comply with a report to Council 24th September 2014. "Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014"</p>

<p>3.03 Functions of the Council</p> <p>3.03.01 Only the Council will exercise the following functions:</p>	<p><u>133.</u> Duty to make arrangements for proper administration of financial affairs.</p> <p><u>134</u> To determine the level and any change in the level of remuneration to be paid to a Chief Officer (excluding the Head of Democratic Services).</p> <p>(mmmmmm)</p> <p>(nnnnn) <u>134.</u> all other matters which, by law, must be reserved to Council.</p>	<p>To comply with a report to Council 24th September 2014. "Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014"</p>
<p>3.05.11</p>	<p><u>3.05.11 JOINT NEGOTIATING AND CONSULTATIVE GROUP (COMMITTEE)</u></p> <p><u>A negotiation and consultative group with members of the Council and representatives of Trade Unions to promote joint participation in all matters of common interest and concern relating to employer/employee relations. The group shall act in accordance with the signed agreement between the Council, the GMB, Unison and Unite and the group's adopted constitution.</u></p> <p><u>Group membership</u></p> <p>(a) <u>The group will consist of 5 elected members, to include the Cabinet Member with Portfolio for Chief Executive's Services who will Chair the group, and 4 other elected members.</u></p> <p>(b) <u>The group members must reflect the political balance of the authority.</u></p> <p>(c) <u>The Unions' representation shall consist of one officer from GMB, one officer from UNISON and one officer from Unite.</u></p> <p>(d) <u>The group shall have Council Officer representation which shall consist of the Head of Human Resources and one other Director/Head of Service to be nominated by the Head of Paid Service.</u></p> <p><u>Function</u></p> <p>(a) <u>The group shall engage, consult and negotiate on all matters pertaining to Council staff terms and conditions of service, staff policies and procedures and employment issues.</u></p> <p>(b) <u>The group will have no decision making powers. It will have the power to make recommendations in accordance with group's adopted constitution.</u></p>	<p>To comply with a report to Council on 11th September 2013 "Joint Negotiating and Consultative Group (JNCG)"</p>
<p>3.05.12</p>	<p><u>3.05.12 INFORMATION GOVERNANCE FORUM</u></p> <p><u>Purpose</u></p> <p>(a) <u>To ensure that the Authority has effective policies and management arrangements in place to cover all aspects of information governance.</u></p> <p>(b) <u>To report to the Corporate Management Team and Audit Committee all matters in relation to the strategic development, implementation, management and monitoring of the Council's information governance arrangements.</u></p> <p><u>Group membership</u></p> <p><u>The Forum is Chaired by the Council's Senior Information Risk Owner (Corporate Director of Customer Services), and has representation from Information Security / ICT, Legal Services, Human Resources & Development, Community Services, the Schools Department and Union representatives as required.</u></p>	<p>To comply with report to Council 18th June 2014 "Information Security Policy and Supporting Operational Policies Responsibility"</p>
<p>Part 4 Procurement and Contracting Rules</p>	<p>Part 4 Procurement and Contracting Rules of the Constitution has been replaced in its entirety.</p>	<p>To comply with report to Council on 23rd April 2014 "Changes to Contract Procedure Rules"</p>

4.01.17 Voting	<p>(C) Show Of Hands <u>Method of voting</u></p> <p>Unless a ballot or recorded vote is demanded under Rules 4.01.17(D), 4.01.17(E) or 4.01.17(F), the Mayor (or Chairperson) will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting, <u>any one of the following means:</u></p> <p>i) <u>by utilising an electronic voting system; or</u></p> <p>ii) <u>by show of hands; or</u></p> <p>iii) <u>if there is no dissent, by the affirmation of the meeting.</u></p>	To comply with report to Council on 18 th June 2014 " Welsh Government Funding for Broadcasting of Council / Committee Meetings "
4.01.25 WEBCASTING OF COUNCIL MEETINGS	<p>Added:-</p> <p>Certain meetings are subject to live web transmission ('webcasting') or are recorded for subsequent broadcast. Fixed cameras are located within the Council Chamber for this purpose.</p> <p>a) The Mayor has the absolute discretion to terminate or suspend the webcast at any time and for any reason which the Mayor deems reasonable. Such circumstances where the Mayor may deem suspension reasonable may include, but are not limited to:</p> <p>(i) Public disturbance or other suspension of the meeting;</p> <p>(ii) Exclusion of public and press being moved and supported;</p> <p>(iii) Any other reason moved, seconded and supported by the Council/Committee</p> <p>b) No exempt or confidential agenda items shall be webcast.</p> <p>c) Subject to paragraph d) below, all archived webcasts will be available to view on the Council's website for a period of six months.</p> <p>d) Archived webcasts or parts of webcasts may be removed from the Council's website if, in the reasonable opinion of the Monitoring Officer, it may prejudice the Council's, or the public's, interests. Content may also be removed if the Monitoring Officer considers that it is necessary because all or part of the content of the webcast is, or is likely to be, in breach of any statutory provision or common law doctrine (for example Data Protection and Human Rights legislation or provisions relating to confidential or exempt information).</p> <p>Agenda Front Sheets and Signage at Meetings - On the front of each agenda and on signs to be displayed inside and outside the meeting room there will be a notice stating that the meeting may be filmed for live or subsequent broadcast via the Council's website on the internet.</p> <p>Conduct of Meetings - At the start of each meeting to be filmed, an announcement will be made to the effect that the meeting is being, or may be, webcast by the Mayor.</p>	To comply with report to Council on 18 th June 2014 " Welsh Government Funding for Broadcasting of Council / Committee Meetings "

	<p>Cessation of Webcasting for Private Sessions - No part of any meeting held will be webcast after Members have passed a resolution excluding the public and the press because there is likely to be disclosure of exempt or confidential information. The Mayor will ensure that filming and/or recording of the meeting has ceased before any discussion of exempt or confidential matters is commenced.</p> <p>Formal Record - Webcasting and the retention of any filmed material does not replace the formal record of the meeting and the decisions made. The only formal record of any meeting of a local authority is its minutes and agendas, which are required to be maintained and retained for a six year period.</p>	
4.06 SCRUTINY PROCEDURE RULES	<p>Added under Chief Executives:-</p> <p><u>To undertake the role of scrutinising the Merthyr Tydfil Local Service Board (LSB). Should there be occasion when the Chief Executives Scrutiny Committee deems that a subject matter relating to the Merthyr Tydfil LSB would be best dealt with by one or more of the other scrutiny committees, the matter can be referred to the appropriate scrutiny committee(s). When it is determined that an issue relating to the LSB is to be dealt with by two or more scrutiny committees, the matter should be referred to a joint scrutiny committee comprising of those committees.</u></p>	To comply with report to Council on 23 rd April 2014 – “Scrutiny of the Merthyr Tydfil Local Service Board (LSB)”
4.08.16	<p>To provide for joint scrutiny committees.</p> <p>Where a Scrutiny Committee conducts a review or scrutinises a matter which also falls (whether in whole or in part) within the remit of another Scrutiny Committee, then:-</p> <p>(i) the Committee conducting the review shall invite the Chairperson of the other Committee(s) (or his/her nominee) to attend its meetings when the matter is being reviewed.</p> <p>or</p> <p>(ii) the scrutiny committees shall meet jointly, or set up a joint Task & Finish Group, to consider the matter (or those parts of the matter which are within the terms of reference of both Committees). At the joint meetings of the scrutiny committees a chairperson from amongst the chairpersons of the participating scrutiny committees will be appointed.</p>	To comply with report to Council on 23 rd April 2014 – “Scrutiny of the Merthyr Tydfil Local Service Board (LSB)”
4.06.21 JOINT SCRUTINY COMMITTEES	<p>Added.</p> <p><u>Two or more principal councils may set up one or more joint overview and scrutiny committees (JOSC), and arrange for the committee or committees to make reports or recommendations to any of the principal councils setting up the committee, and to the executives of those councils. (See Local Government (Wales) Measure 2011 and the statutory guidance issued under Section 58 Local Government (Wales) Measure 2011.</u></p>	To comply with report to Council on 17 th July 2013 “Establishment of a Joint Overview and Scrutiny

		Committee for the Central South Consortium Joint Education Service"
4.09 Officer Employment Rules	<p>4.09 OFFICER EMPLOYMENT RULES</p> <p>4.09.01 PROVISIONS RELATING TO STAFF (LOCAL AUTHORITIES (STANDING ORDERS) (WALES) REGULATIONS 2006 <u>AS AMENDED BY THE LOCAL AUTHORITIES (STANDING ORDERS) (WALES) (AMENDMENT) REGULATIONS 2014</u></p>	To comply with a report to Council 24 th September 2014. " Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014 "
4.09.01 PROVISIONS RELATING TO STAFF (LOCAL AUTHORITIES (STANDING ORDERS) (WALES) REGULATIONS 2006 AS AMENDED BY THE LOCAL AUTHORITIES (STANDING ORDERS) (WALES) (AMENDMENT) REGULATIONS 2014	<p>2) paragraph 10 above does not apply to the appointment or dismissal of, or disciplinary actions against:</p> <ul style="list-style-type: none"> a) the officer designated as the head of the Council's paid service; b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act; c) a non statutory chief officer within the meaning of section 2(7) of the 1989 Act; d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act; e) a person appointed in pursuance of section 9 of the 1989 Act; f) <u>the Monitoring officer within the meaning of Section 5 of the Local Government & Housing Act 1989 as amended</u> e)g) <u>the Head of Democratic Services</u> 	To comply with a report to Council 24 th September 2014. " Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014 "
4.09.08 CHIEF OFFICER/ DEPUTY CHIEF OFFER APPOINTMENTS	<p><u>4.09.08 CHIEF OFFICER/ DEPUTY CHIEF OFFER APPOINTMENTS</u></p> <p><u>Where the Authority proposes to appoint a Chief Officer or Deputy Chief Officer (within the meaning of the Local Authorities (Standing Orders) (Wales) Regulations 2006) and the remuneration which it proposes to pay to the chief officer is £100,000 or more per annum, it must:</u></p> <ul style="list-style-type: none"> a) Draw up a statement specifying: <ul style="list-style-type: none"> i) The duties of the officer concerned, and ii) Any qualifications or qualities to be sought in the person to be appointed; b) Make arrangements for the post to be publicly advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and c) Make arrangements for a copy of the statement mentioned in paragraphs (a) & (b) mentioned in (a) to be sent to any person on request. <p><u>The Authority is not required to take the step set out in 4.09.08 (b) i.e. to publicly advertise, if it proposes to appoint the chief officer for a period of no longer than 12 months.</u></p>	To comply with a report to Council 24 th September 2014. " Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014 "

	<p>The requirement to publically advertise all Chief officer posts where the annual remuneration is £100,000 or more</p>	
<p>4.09.10</p>	<p><u>DISCIPLINARY MATTERS</u></p> <p>4.09.08 HEAD OF PAID SERVICE (CHIEF EXECUTIVE), MONITORING OFFICER, AND THE SECTION 151 CHIEF FINANCE OFFICER, <u>AND THE HEAD OF DEMOCRATIC SERVICES</u></p> <p>General</p> <p>No disciplinary action (other than action to which the preceding paragraph applies) in respect of the Hhead of the Council's paid service (unless the head of the Council's paid service is also a council manager of the Council), its Mmonitoring Officer, or its Cchief Finance Officer or its <u>Head of Democratic Services</u> may be taken by the Council, or by a committee, a sub-committee, a joint committee on which the Council is represented or any other person acting on behalf of the Council other than in accordance with a recommendation in a report made by the designated independent person under regulation 9 of the Local Authorities (Standing Orders)(Wales) Regulations 2006 (investigation of alleged misconduct).</p> <p>The action under which this paragraph applies is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; provided such suspension is on full pay and terminates no later than the expiry of two months beginning on the day on which the suspension takes effect. The principles of natural justice and of good management practice must govern the conduct of any proceedings against the officers referred to in the above paragraphchief executive on the grounds of either alleged misconduct (i.e. 'discipline') or alleged inability to carry out their roles of chief executive (i.e. 'capability').</p> <p>Council should also have full regard to the principles and standards set out in the ACAS Code of Practice on Disciplinary Procedures.</p> <p>Disciplinary Procedure – Investigation of alleged misconduct</p> <p>1. Subject to the above general provisions <u>and in accordance with the Local Authorities (Standing Orders)(Wales) Regulations 2006 as amended by the Local Authorities (Standing Orders)(Wales) (Amendment) Regulations 2014</u> and paragraph (11) below, where it appears to the Council that an allegation of misconduct which may lead to disciplinary action has been made against:</p> <p>a) the head of the Council's paid service;</p> <p>b) its monitoring Officer; or</p> <hr/> <p>c) or <u>its chief finance officer, or</u></p> <p>e)d) its head of democratic services</p> <p>("the relevant officer"), as the case may be, the Council must appoint a committee (an investigation committee) to consider the alleged misconduct.</p>	<p>To comply with a report to Council 24th September 2014. "Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014"</p>

<p>4.09.08 HEAD OF PAID SERVICE (CHIEF EXECUTIVE), MONITORING OFFICER, THE SECTION 151 CHIEF FINANCE OFFICER, AND THE HEAD OF DEMOCRATIC SERVICES</p> <p>4.09.09</p>	<p>11. The provisions set out in 1—10 above does not apply in relation to the head of the Council's paid service if that person is also the council manager of the Council.</p> <p>4.09.09 DIRECTORS AND MANAGERS</p> <p>Introduction</p> <p>The procedures relating to discipline and capability apply to chief officers and related posts above Spinal Column Point 49 of the National Pay and Grading Salary Scales for Local Government Employees (Green Book) with the exception of the Head of Paid Service, Monitoring Officer, the and Chief Finance Officer and the Head of Democratic Services. In cases of gross misconduct, it may not be necessary to operate all stages of the disciplinary procedure.</p>	<p>To comply with a report to Council 24th September 2014. "Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014"</p>
<p>4.09.10 This is added</p>	<p>4.09.10 GENERAL NOTE</p> <p><u>Schedule 3 Part 1 Paragraph 3 (a) to (j) of the Local Authorities (Standing Orders) (Wales) Regulations 2006 as amended by the Local Authorities (Standing Orders) (Wales) Amendment) Regulations 2014 set out mandatory requirements in respect of disciplinary proceedings relating to specified posts to include (a) the Head of Paid Service; (b) a statutory chief officer, (c) a non-statutory chief officer, (d) a deputy chief officer, (e) a person appointed as an assistant for a political group; (f) a person appointed as a mayor's assistant, (g) a person to whom regulations made under section 35(4) and (5) of the Education Act 2002 apply, (g) the Monitoring Officer and (j) the Head of Democratic Services. The provisions relating to these posts also apply to an officer who was, but at the time of the proposed disciplinary action no longer is such an officer, and where the alleged misconduct, or, as the case may be, the reason for the proposal for dismissal, occurred during the period when the officer was such an officer.</u></p>	<p>To comply with a report to Council 24th September 2014. "Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014"</p>
<p>6.01.03</p>	<p><u>SENIOR SALARY</u></p> <p>A Senior Salary will be paid to the 67 Members of Cabinet, the 4 Chairs of the Scrutiny Committees, the Chair of the Audit Committee (if such Chair is a Councillor of this Authority), and the Chair of the Planning and Regulatory Committee, in accordance with the appropriate IRPW Regulations.</p>	<p>To comply with report to Council on 21st May 2014 "A Cabinet Member for Transformational Change"</p>
<p>PART 7</p> <p>7.01 - MANAGEMENT STRUCTURES</p>	<p>Structure in Constitution amended in line with report.</p>	<p>To comply with a report to Council 16th July 2014 "Merthyr Tydfil County Borough Council – Interim Structure"</p>

2.08

ARTICLE 8 – REGULATORY AND OTHER COMMITTEES

2.08.01 REGULATORY AND OTHER COMMITTEES

The Council will appoint the committees listed below to discharge the functions set out in Part 3 of the Constitution;

- (a) Planning, Regulatory & Licensing ~~and Regulatory~~ Committee
- (b) Statutory Licensing Committee

3.05

REGULATORY AND OTHER MEETINGS

The Council has determined to establish the following Regulatory and other Committees to carry out under powers delegated by the Council the functions indicated.

Appointments, or reconfirmation of appointments of Members and the Chairperson and Vice Chairperson to each Committee will be made by the Council at the Annual Meeting of the Council each year.

3.05.01 ~~PLANNING AND~~ REGULATORY AND LICENSING COMMITTEE

A Committee of 11 Members. This is to allow for one Councillor from each Electoral Division, unless agreed otherwise by Council. No Member appointed to the Planning ~~and~~ Regulatory and Licensing Committee can sit without having undertaken a period of training in planning procedures as specified by the Authority.

Details of the planning and regulatory functions of the Planning ~~and~~ Regulatory and Licensing Committee that are delegated to the Director of Customer Services, Head of Town Planning, and other officers are contained in the Scheme of Delegation.

Function

- (a) To exercise those Planning and Conservation functions relating to town and country planning and development control as specified:
 - (i) in Part A paragraphs 1 – 32 and Part I paragraphs 3 and 4 of Schedule 1 of The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (as amended).
 - (ii) in regulation 3(2), 3(3) or 3(4) of those Regulations which are not in paragraphs 2 – 9 below unless the responsibility for exercising any of those functions has been delegated by the Council to any other committee, sub committee or other body;
- (b) To exercise those Licensing and Regulatory functions as specified in Part B paragraphs 1 – 32, 35 & 36, 37 – 41 and 43 of Schedule 1 of the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007, as amended.
- (c) To make recommendations to the Council in respect of:
 - (i) Departure Applications being those that are required to be referred to the Welsh Government

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- (ii) Applications which accord with Council Policy which the Committee are minded to approve
 - (d) To deal with all matters relating to or arising under the regulations for the time being in force governing:
 - (i) ~~the~~ control of advertisements
 - (e) To discharge the functions of the Council and to authorise the service of notices and the making of orders pursuant to and in accordance with the powers conferred upon the Council as local planning authority by the Planning (Listed Buildings and Conservation Areas) Act 1990
 - (f) To discharge the Council's functions pursuant to:
 - (i) the Planning (Hazardous Substances Act)1990;
 - (ii) ~~the~~ Building Control Regulations
 - (g) To be responsible for:
 - (i) ~~the~~ making of Tree Preservation Orders (TPO's);
 - (ii) the confirmation of TPO's in respect of which there are no objections or representations;
 - (iii) ~~the~~ making of observations on tree felling licences proposed to be granted by the Forestry Commission;
 - (h) To approve design briefs and advice notes relating to development control
 - (i) To accept tenders for the execution of work, the performance of services or the supply of goods or materials in connection with the exercise of the functions of the Committee
 - (j) To determine from time to time any standard conditions applicable to and detailed policies governing the issue of licences, permits and consents in respect of which the Licensing Committee has delegated power to hear and determine applications and to deal with detailed matters relating thereto;
 - (k) To prescribe guidelines, conditions, limitations of restrictions governing the grant of applications for Hackney Carriage and Private Hire Vehicle Driver's Licences by Council officers under the powers delegated to them;
 - (l) To determine fees charged in respect of those licensing functions within the purview of the Planning ~~and~~ Regulatory and Licensing Committee and to hear and determine objections in relation to proposed fee revisions;
 - (m) To determine revisions of Hackney Carriage fares and hear and determine objections to proposed revisions;

3.05.02 LICENSING SUB COMMITTEE

A Committee of 3 Members consisting of the Chairperson and/or Vice Chairperson of the Planning ~~and~~ Regulatory and Licensing Committee together with 1 or 2 Members (as the case may be) drawn on a rota basis from the Members of the Planning ~~and~~ Regulatory and Licensing Committee.

In the event that more than one Committee is required and needs to be convened then Chairperson of the Planning ~~and~~ Regulatory and Licensing Committee together with 2 Members will sit as one Committee and the Vice Chairperson of the Planning ~~and~~ Regulatory and Licensing Committee together with 2 members will sit as another Committee.

Details of the regulatory functions of the Licensing Committee that are delegated to the Director of Customer Services or other officers are contained in the Scheme of Delegation.

Function

- (a) To hear and determine applications and to deal with all detailed matters applicable thereto (including the transfer, modification, variation, suspension and revocation of licences) relating to:
- ~~(i) Public Entertainment Licences, Sunday Entertainment Licences, Indoor Sports Entertainment Licences and Certificates of Suitability for Music and Dancing;~~
 - ~~(ii) Temporary Events Notices, Personal and Premises Licences and Club Registration Certificates together with any other application that may arise in accordance with the Licensing Act 2003;~~
 - (iii) Hackney Carriage and Private Hire Vehicle Licences, Drivers' Licences and Operators' Licences;
 - ~~(iv) Cinema and Theatre Licences;~~
 - ~~(v) Late Night Refreshment House Licences;~~
 - ~~(vi) Permits for machines for gaming by way of amusements with prizes;~~
 - ~~(vii) Permits for small lotteries;~~
 - ~~(viii) Licences to hold outdoor public musical entertainment;~~
 - (ix) Street Trading Licences and Consents;
 - (x) Sex Establishment;
 - ~~(xi) Scrap Metal Dealers;~~
 - (xii) Street Collections;
 - (xiii) House to House Collections

~~(xiv) Door Control Personnel.~~

- ~~(vi) To discharge all licensing functions under the Zoo Licensing Act 1981~~
 - ~~(vii) To discharge all licensing functions under the Animal Boarding Establishments Act 1963~~
 - ~~(viii) To discharge all licensing functions under the Breeding of Dogs Act 1973 And 1991~~
 - ~~(ix) To discharge all licensing functions under the Highways Act 1980~~
 - ~~(x) To discharge all licensing functions under the House to House Collections Act 1939~~
 - ~~(xi) To discharge all licensing functions under the Local Government (Miscellaneous Provisions) Acts 1972, 1976 & 1982~~
 - ~~(xiii) To discharge all licensing functions under the Pet Animals Act 1951~~
 - ~~(xiv) To discharge all licensing functions under the Police, Factories etc (Miscellaneous Provisions) Act 1916~~
 - ~~(xvi) To discharge all licensing functions under the Riding Establishments Acts 1964 and 1970~~
- (b) To determine matters of detail of the Customer Care Course for Hackney Carriage and Private Hire Vehicle Drivers including the making of any charges deemed appropriate
- (c) To determine all applications received in respect of stands and grounds Safety of Sports Ground Act 1975 and the Fire Safety and Safety of Places of Sports Act 1987
- (d) To hear and determine applications for the grant or renewal of approvals of premises for the solemnisation of marriages in pursuance of section 26(1) (bb) of the Marriage Act 1949, or to revoke such approvals, in circumstances in which the Council Officer to whom the power to determine such applications, or to revoke such approvals, has declined to exercise the delegated power

3.05.03 STATUTORY LICENSING COMMITTEE

A Committee of 11 Members. This is to allow for one Councillor from each Electoral Division, unless agreed otherwise by Council. Details of the Statutory Licensing Committee functions that are delegated to the Director of Customer Services, and other officers are contained in the Scheme of Delegation.

Function

- (a) To discharge all Licensing functions pursuant to the Licensing Act 2003 and any associated regulations, in particular to review in line with guidance the Council's Licensing Policy prior to it's submission to Full Council for approval.
- (b) To discharge all Licensing functions pursuant to the Gambling Act 2005 and any associated regulations, in particular to review in line with guidance the

Council's Gambling Act Policy prior to its submission to Full Council for approval.

Any proceedings of this committee shall be governed by the Licensing Act 2003 (Hearings) Regulations 2005 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements)(England and Wales) Regulations 2007.

3.05.04 STATUTORY LICENSING SUB COMMITTEE

A Committee of 3 Members consisting of the Chairperson and/or Vice Chairperson of the Statutory Licensing Committee together with 1 or 2 Members (as the case may be) drawn on a rota basis from the Members of the Statutory Licensing Committee.

Function

- (a) To hear and determine applications and to deal with all detailed matters applicable thereto (including the transfer, modification, variation, suspension and revocation of licences) relating to the Licensing Act 2003.
- (b) To hear and determine applications and to deal with all detailed matters applicable thereto (including the transfer, modification, variation, suspension and revocation of licences) relating to the Gambling Act 2005.

3.05.053 APPEALS COMMITTEE

A Committee of 10 Members

Function:

- (a) To hear and determine an appeal by the Chief Executive and Directors in respect of the following employment decisions e.g. dismissal and grievance.
- (b) To hear and determine appeals by employees (except the Chief Executive and Directors) in respect of any local employment decision e.g. conditions of service and grading of posts.
- (c) To hear and determine appeals against decisions of the Licensing Committee (where appropriate).

3.05.064 OBJECTIONS AND APPEALS SUB COMMITTEE

A Committee of 3 Members consisting of the Chairperson and/or Vice Chairperson of the Appeals Committee together with 1 or 2 Members (as the case may be) drawn on a rota basis from the Members of the Appeals Committee.

Function

- (a) To determine whether or not proposed orders in pursuance of any provision contained in the enactments listed below (or any statutory modification, re-

enactment or amendment thereof) in respect of which objections and/or representations have been received should be made as proposed; to refer (where necessary) any proposed order to a local public inquiry; to amend, vary or modify any proposed order; to uphold the objections and withdraw any proposed order:

- (i) Road Traffic Regulation Act 1984
 - (ii) Road Traffic Regulation (Special Events) Act 1994
 - (iii) Town Police Clauses Act 1847
-
- (b) To determine whether or not Tree Preservation Orders in respect of which objections have received should be confirmed and, if so, whether with or without modifications.
 - (c) To hear and determine objections to and representations regarding any proposed designation or re-designation of streets within the County Borough for purposes of street trading and to determine against refusal of street trading consents or licences.
 - (d) To hear and determine appeals against the decision of any Council Officer to whom power to determine applications for the grant or renewal of premises for the solemnisation of marriages in pursuance of section 26(1) (bb) of the Marriage Act 1949, or to revoke such approvals, has been delegated to refuse to grant or renew such an approval or to revoke such an approval.
 - (e) To hear and determine appeals against the decision of the Licensing Committee in those cases in which the Licensing Committee is not prepared to approve an application for registration under the Council's Door Control Personnel Scheme.

| 3.05.076 RIGHTS OF WAY COMMITTEE

| A Committee of 5 Members consisting of the Chairperson and/or Vice Chairperson of the Planning and Regulatory and Licensing Committee together with 3 or 4 Members (as the case may be) drawn on a rota basis from the Members of the Council.

Details of the functions that are delegated to the Director of Customer Services and other officers are contained in the Scheme of Delegation.

Function

- (a) To approve the making of applications for and the making, modification or variation of Orders relating to rights of way in pursuance of any provision contained in the following enactments (or any statutory modification, re-enactment or amendment thereof):
 - (i) Highways Act 1980
 - (ii) Town and Country Planning Act 1990

(iii) Wildlife and Countryside Act 1981

(iv) Cycle Tracks Act 1984

- (b) To confirm, where the Council has power to do so, any proposed Order made in accordance with the above to which there are no objections or in respect of which any objections made are withdrawn.
- (c) Where the Council does not have power to determine any proposed Order to refer the proposed Order to such determining body (i.e. Welsh Government, the Magistrates' Court or County Court) as appropriate in the circumstances.
- (d) To dedicate rights of way over land in council ownership.

5.04

WHISTLEBLOWING POLICY

POLICY FOR CONFIDENTIAL REPORTING OF CONCERNS ("WHISTLEBLOWING") AND PROCEDURES FOR DEALING WITH SUSPICIONS AND ALLEGATIONS.

5.03.01 INTRODUCTION

This policy reflects the Authority's commitment to good practices, to valuing staff and seeking continuous improvement in service delivery.

Employees, councillors, co-opted members and governors are often the first to realise that there may be something wrong within the Authority. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Authority. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than to report what may just be a suspicion of malpractice.

The Authority is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect employees, councillors, co-opted members, governors and others that we deal with who have concerns about any aspect of the Authority's work to come forward and voice those concerns. It is recognised that most cases will have to proceed on a confidential basis.

This policy document makes it clear that concerns can be raised without fear of victimisation, subsequent discrimination or disadvantage. The policy is intended to encourage and enable employees, members and governors to raise concerns **within** the Authority rather than overlooking a problem or 'blowing the whistle' outside. The Authority wants staff to participate without fear of reprisals.

The ~~policyCode~~ applies to all employees (to include temporary employees and trainees), councillors, co-opted members and governors, independent contractors and those ~~contractors~~ working for the Authority on council premises, for example, agency staff, builders, drivers, etc. It also covers suppliers and those providing a service under a contract with the Authority in their own premises, for example foster homes, childcare, etc.

These procedures are in addition to the Authority's Corporate Complaints, Compliments and Comments Procedure, Grievance Procedure, Financial Procedure Rules and other statutory reporting procedures applicable.

This policy ~~was~~has been written in accordance with the Public Interest Disclosure Act 1998 ("the 1998 Act") and ~~was~~has been discussed with trade unions and has their support. It has also been updated in accordance with the provisions of the Enterprise and Regulatory Reform Act 2013 ("the 2013 Act").

The Authority is committed to the values of probity, accountability and best practice, but ~~at~~ the determined perpetrator will always find a way round systems and procedures. It is, therefore, necessary for all councillors, co-opted members, governors, directors, managers and employees, including staff employed in schools, to be aware of what is required in the event of being notified of a suspected fraud/malpractice. This document sets out the process for notifying any suspicions and also how the Authority will respond.

Under the ~~Public Interest Disclosure Act 1998 Act~~, employees who speak out against corruption and malpractice at work ~~will~~ have statutory protection against victimisation and dismissal, providing that the disclosure ~~is~~ made is a "protected disclosure" made in accordance with 1998 Act and the amendments to it introduced by the 2013 Act. ~~n-good faith~~. It will be automatically unfair to dismiss any employee because they have made a protected disclosure and it will be unlawful to subject them to any other detriment, such as demotion or a fine. Employment Tribunals can award redeployment or compensation to successful claimants. It should however be noted that an employment tribunal now has the power to reduce any compensation awarded to an employee for detriment or dismissal relating to a protected disclosure by up to 25% where the disclosure was not made in good faith.

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What is a protected disclosure?

A "protected disclosure" must be of a certain type of information known as a "qualifying disclosure" and the disclosure must be made in a way which is described in the 1998 Act as amended.

The statutory definition of a "protected disclosure" and further explanatory information concerning the same is contained ~~Details on what is classed as a protected disclosure are contained in appen~~in appendix 1 of this document.

A useful list of Do's and Don'ts for employees is included as appendix 2.

5.04.02 AIMS AND SCOPE OF THIS POLICY

This policy aims to:

- Make you feel confident to raise concerns and to question and act upon concerns about practice;
- Give you avenues to raise your concerns and receive feedback on any action taken;
- Guarantee that you receive a response to your concerns and ensures that you are aware of the process to follow if you are not satisfied;
- Offer reassurance that after making a "protected disclosure" you will be protected from possible reprisals or victimisation ~~for whistleblowing in good faith.~~

There are existing procedures in place if you have a grievance relating to your own employment or consider that you are being harassed due to your race or sex, or if you are concerned about health and safety risks, including risks to the public as well as to other employees. Indeed you are under a legal obligation to report to your supervisor or manager any work situation that you consider to represent:

- a danger to the health and safety of yourself, fellow employees or members of the public; or
- a shortcoming in the Authority's arrangements for health and safety.

If you are reluctant to raise such health and safety concerns with your supervisor or manager, or if you have raised them and are concerned about the response, then arrangements exist for you to raise the health and safety concerns with the Authority's Personnel Department and/or with Health and Safety representatives from the relevant trade union.

This policy is intended to cover concerns that fall outside the scope of other procedures. Concerns must be raised when in the public interest, councillors, co-opted members, employees (to include temporary employees and trainees), contractors, agency workers or governors reasonably believe that one or more of the following has occurred or is in the process of occurring or is likely to occur:

- conduct which is an offence or a breach of law;
- disclosures related to miscarriages of justice;
- a failure to comply with a statutory or legal obligation;
- maladministration, misconduct or malpractice;

- health and safety risks, including risks to the public as well as other employees;
- damage to the environment;
- the unauthorised use of public funds or other funds (e.g. school private funds);
- fraud and corruption;
- mistreatment of any person, in particular children or vulnerable adults;
- sexual or physical abuse of clients;
- any attempt to prevent disclosure of any of the above, or
- other conduct which gives you cause for concern.

The overriding concern should be that it would be in the public interest for malpractice to be corrected and, if appropriate, sanctions applied.

Thus any serious concerns that you have about any aspect of service provision or the conduct of employees or councillors of the Authority or others acting on behalf of the Authority can be reported under this policy. This may be about something that:

- makes you feel uncomfortable in terms of known standards, your experience or the standards you believe the Authority subscribes to; or
- is against the Councils procedural rules and policies; or
- falls below established standards of practice; or
- amounts to improper conduct.

This policy supplements and does **not** replace the corporate complaints procedure, or the grievance procedure and other procedures established to deal with aspects of harassment i.e. sexual, racial harassment, and with health and safety concerns.

5.04.03 SAFEGUARDS

(A) Harassment or Victimisation

The Authority is committed to good practice and high standards and aims to be supportive of its employees.

The Authority recognises that the decision to report a concern can be a difficult one to make. However uncovering malpractice will be doing a service to the

Authority. You will be doing your duty to your Authority and those for whom you are providing a service.

The Authority will fulfil its responsibility to ensure that you are **NOT** harassed, victimised or otherwise disadvantaged when you raise a concern which is a "protected disclosure", in good faith. Any person(s) who engage in any form of victimisation or harassment against you as a result of you making a "protected disclosure" raising a concern in good faith may be subject to disciplinary action.

In addition to this the ~~Public Interest Disclosure Act-1998 Act will~~ protects all individuals from any reprisals as long as they meet the rules set out in the 1998 Act, these include:

~~You must disclose the information in good faith;~~

- You must believe it to be substantially true;
- The disclosure must be in the public interest;
- You must not commit a criminal offence by making the disclosure
- ~~You must not act maliciously or make false allegations;~~
- You must **not** seek any personal gain.

Allegations by an individual who is the subject of disciplinary investigations or proceedings concerning the conduct of those proceedings can only be raised through the disciplinary appeals procedures. However, it does not mean that if staff are already the subject of disciplinary or redundancy procedures, that those procedures will be halted as a result of their whistleblowing.

The 2013 Act amended the 1998 Act by introducing statutory provisions to:-

1. Make employees who victimise whistle-blowers personally liable for their own conduct and;

2. Make the Council vicariously liable if it has not taken all reasonable steps to prevent the act of victimisation.

(B) Confidentiality

All concerns will be treated in confidence wherever possible and every effort will be made to preserve your anonymity if you so wish. It must be appreciated that the investigation process usually reveals the source of the information and a statement may be required from staff as part of the evidence, which will be seen by all parties.

You may need however to come forward as a witness, but if you wish to be supported by a representative of your choice then this would be available to you.

(C) Anonymous Allegations

This policy encourages you to put your name to your allegation whenever possible.

Concerns expressed anonymously are much less powerful but they will be considered so far as is possible or practicable by the Authority.

In such circumstances, the Authority will take the following factors into account when establishing the scope and depth of the investigation:

- The seriousness of the issues raised;
- The credibility of the concern;
- The likelihood of confirming the allegation from attributable sources and information provided.

(D) Unproven~~true~~ Allegations

If you make an allegation which is a protected disclosure that ~~in good faith, but it~~ is not confirmed by the investigation, no disciplinary action will be taken against you. ~~If however, you make an allegation maliciously or for personal gain, disciplinary action may be taken against you.~~

5.04.04 NOTIFYING SUSPECTED CONCERNS

Suspensions can be discovered in a number of ways but, in all cases, it is important that staff feel able to report their concerns and are also aware of the means by which they are able to do so.

(A) Internal Avenues

The Authority has several means available to its employees:

Line Management

- If an employee discovers a suspected fraud/corruption or malpractice it should be reported to the line manager as a matter of urgency. Whilst line managers should establish as many details as possible (by discussion with the notifying officer only), he/she should formally report the incident to the Director responsible for the area concerned. That Director should then notify the Chief Executive.
- In the case of schools the head teacher and chairperson of the governing body would need to be informed. A decision would then need to be taken as to the investigative action required.
- In the case of a fraud or financial irregularity Internal Audit must be contacted immediately.

For councillors, concerns must be raised with the Chief Executive, the relevant Director, The Assistant Director Chief Executives, the relevant Scrutiny Committee or the Standards Committee.

In some cases, the notifying individual may prefer to report the suspicion to an independent officer or even to remain anonymous, thus the Authority has other means available. If necessary, a route other than their normal line manager may be used to raise such issues. There are some Officers whose responsibilities mean that they should be contacted on certain matters.

- In respect of any matters involving actual or potential unlawful conduct, maladministration or contravention of the law:
 - Head of Legal and Democratic Services (Monitoring Officer)
- In respect of any potential irregularity affecting any financial or other resources of the County Borough Council:
 - Chief Finance officer
- In respect of any other service related issue or employment matter:
 - Head of Human Resources

or, matters can be brought to the attention of the Chief Executive.

For school governors concerns should be raised with the Director of Community Services, the Chief Education Officer, Chief Finance Officer, the Chief Executive or the Assistant Director Chief Executives.

For concerns in respect of professional conduct, the above apply, but for social care and adult welfare the preferred route would be via the Director of Community Services.

For concerns in relation to child welfare the preferred route would be via the Director of Community Services.

Examples of alternative routes for reporting concerns are identified below:

- The Chief Executive;
- Director;
- Monitoring Officer;
- Internal Audit / Assistant Director Chief Executives
- Human Resources and Development;
- Union;
- Councillors;
- Chairperson of Governors;
- Scrutiny Committees;
- Standards Committee.

Concerns should be raised in writing. You will need 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. If you do not feel able to put your concern in writing, you can telephone or meet the appropriate officer. The appropriate officer will make notes of any conversations with you so that, if required, a proper investigation can be undertaken.

Alternatively, you can leave a message on the 24 hour Council "Anti-Fraud Line" on 01685 725111. This service is strictly confidential and you will not be asked to give your name if you do not want to.

The earlier you express the concern, and the more details you have, the easier it will be to take action.

At this stage, you are not expected to prove the allegation, but you will need to demonstrate to the person contacted that there are sufficient grounds for your concern.

When raising any concerns, your rights under the Human Rights Act 1998 will be maintained.

Internal Audit

The primary role of Internal Audit is to report on the adequacy of systems and procedures (the "internal control" environment). However, they are also charged with the responsibility for being the usual means of investigating suspected fraud. The Internal Audit Division has many years' experience in investigation and the Audit, Performance & Partnerships Manager and his staff will always be receptive to discussing concerns raised by staff or the general public.

If the allegations are of a professional malpractice nature, the investigation may well have to be carried out by persons other than Internal Audit. This decision would be taken by Senior Management with advice being taken from the Human Resources and Development Division.

Anti-Fraud Line

The Authority has established a dedicated telephone line that allows individuals to raise concerns. Where it is the wish of the individual to report suspicions in an anonymous manner, then this provides a suitable medium.

The Authority will always encourage individuals to come forward and be identified as this is an indication that it is not merely someone with a "grudge" making false accusations and also allows the suspicion to be acted upon with greater effectiveness and efficiency.

The Council "Anti-Fraud Line" is advertised throughout the local media and in Council establishments throughout the County Borough. The telephone number for the Council "Anti-Fraud Line" is 01685 725111.

(B) External Avenues

If you feel unable to report your concerns via the internal procedures, the following external routes are available:

- The Public Interest Disclosure Act 1998 allows you to contact the Audit Commission on a special telephone line, the number is 0207 630 1019
- For further advice you can contact the Public Concern at Work charity that provides free and confidential advice for employees on 0207 404 6609 or via their website www.pcaaw.org.co.uk.

5.04.05 INVESTIGATING SUSPECTED FRAUD/MALPRACTICE

(A) Initial Steps

Once malpractice/irregularity is suspected, it is critical that any investigation is conducted in a professional manner aimed at ensuring that the current and future interests of both the Authority and the suspected individual(s) are protected. The latter is equally important as a suspicion should not be seen as a guilt to be proved.

It is also crucial that the notifying employee does not feel threatened. The Authority undertakes to protect the identity of such employees wherever possible. However, it must be appreciated that the investigation process usually reveals the source of the information and a statement may be required from staff as part of the evidence, which will be seen by all parties. If the matter is so serious that the police have to become involved the identity of the person making the allegation may have to be divulged.

For each notified suspicion, the Director of the area concerned or the Chief Executive will appoint an "Investigating Officer" to be in charge of the investigation on a day-to-day basis. The head teacher and the governing body will make this decision in the case of a school after receiving advice from appropriate officers of the Authority.

(B) Subsequent Steps

The Investigating Officer and the appropriate Director or Chief Executive, (head teacher and chairperson of governors in the case of schools), must:

- initially assess, with advice from Human Resources and Development, whether there is a need for any employee to be suspended. The decision should be kept under review at all stages of the ensuing investigation;
- identify a course of action (what, who, when, how, where);
- identify the reporting process (who by, to whom, when and how);
- ensure the strict confidentiality is continuously maintained;
- bring the matter to the attention of the External Auditor if considered appropriate.

The Investigating Officer will:

- open a file to record chronologically:
 - telephone conversations;
 - face-to-face discussions;
 - records/documents reviewed;
 - tests undertaken and results.

the file should be indexed and all details recorded no matter how insignificant they may initially appear.

- ensure the correct form of evidence is obtained and appropriately retained:
 - prime documents;
 - certified copies;
 - physical items;
 - secondary evidence (e.g. discussions etc.);
 - circumstantial;
 - hearsay.
- ensure interviews are conducted in the correct manner. In particular, that the requirements of the Police and Criminal Evidence Act 1984 are complied with when interviewing suspects if appropriate to the circumstances.

5.04.06 HOW THE COUNCIL WILL RESPOND

The Authority will respond to your concerns, and it will be necessary to investigate your concerns but this is not the same as either accepting or rejecting them.

Within **5 working days** of a concern being raised (excluding anonymous concerns), you will be sent a written response:

- acknowledging that the concern has been received;
- indicating how it is proposed to deal with the matter;
- giving an estimate of how long it will take to provide a final response;
- telling you whether any enquiries have been made;
- supply you with information on staff support mechanisms.

Where appropriate, matters raised may:

- be investigated by Management, Internal Audit, Benefits Investigation team, Personnel, the Monitoring Officer or through the disciplinary process;
- be referred to the police or other statutory agencies;
- be referred to the external auditor;
- form the subject of an independent enquiry.

In order to protect individuals, those about whom concerns are raised and the Authority, initial enquiries will be made to decide whether an investigation is appropriate and if so, what form it should take. Concerns or allegations which fall within the scope of specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.

Any initial investigations will be carried out in the interest of natural justice and will adhere to the Human Rights Act 1998 and Regulation of Investigatory Powers Act 2000 [\(if appropriate\)](#).

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.

The amount of contact between the individual 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 investigating officers, will seek further information from you.

Where any meeting is arranged, and this can be off-site if you so wish, you can be accompanied by a trade union or professional association representative or a friend.

The Authority will take steps to minimise any difficulties that you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings the Authority will arrange for you to receive advice about the procedure.

The Authority 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 outcomes of any investigation.

You can withdraw from the process at any stage. If you do, you or your representative must inform the person with whom you raised the initial concern and the investigating officer. You will be requested to provide a reason for your withdrawal and the HR Manager will be informed.

Any full investigation will be carried out in the interest of natural justice and the requirements of the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000 [\(if applicable\)](#).

The person against whom the concern has been raised will, subject to current personnel procedures, be informed following the initial investigations if it is considered that there is an issue to be investigated further. This person will be

supported in an appropriate manner and will be informed of the progress of the investigation.

5.04.07 THE RESPONSIBLE OFFICER

The Head of Legal and Democratic Services (as Monitoring Officer) has overall responsibility for the maintenance and operation of this policy. That officer maintains a record of concerns raised and the outcomes (but in a form which does not endanger your confidentiality) and may report as necessary to the Council, but in such a way that your confidentiality will be preserved.

Other useful contacts with respect to this policy are the Audit, Performance & Partnerships Manager, the HR Manager and your trade union representative.

5.04.08 HOW THE MATTER CAN BE TAKEN FURTHER

This policy is intended to provide you with an avenue **within** the Authority to raise concerns. The Authority hopes you will be satisfied with any action taken. If you are not satisfied with the outcome of your confidential report you can write to the Chief Executive and ask for the investigation and outcome to be reviewed [within 14 days from the receipt of the confidential report](#). If you remain dissatisfied, and you feel it is right to take the matter outside of the Authority, the following are possible contact points:

- local councillor (if you are an employee or live in the area of the Authority);
- the external auditor;
- relevant professional bodies or regulatory organisations;
- the Local Government Ombudsman;
- your solicitor;
- the police;
- trade union/professional association;
- Citizens Advice Bureau;
- Public Concern at Work (Public Concern at Work is an independent charity that provides free advice for persons who wish to express concern about fraud and other serious malpractice and can be contacted on 0207 404 6609 or via their website www.pcaw.org.uk).

One possibility is that you may wish to rely on your rights under the **Public Interest Disclosure Act 1998 Act**. This Act gives you protection from victimisation if you make certain disclosures of information in the public interest [Please refer to appendix 1 and to the full text of the 1998 Act](#). The provisions are quite complex

and include a list of prescribed persons outside of the Authority who can be contacted in certain circumstances. You should seek advice on the effect of the [1998 Act](#) from the persons referred to above.

If you do take the matter outside of the Authority, you should ensure that you do not disclose information where you owe a duty of confidentiality to persons other than the Authority (e.g. service users) or where you would commit an offence by making disclosure. In order to ensure that you do not make any such disclosures you may want to check the position with the Head of Legal and Democratic Services (Monitoring Officer).

5.04.09 LIAISON WITH THE POLICE OR THE EXTERNAL AGENCIES

(A) Police

The experts at investigating criminal activity/fraud are the Police. They will also advise on the likely outcome of any intended prosecution. Initial contact with the Police should only be undertaken following discussion between the Chief Executive, the relevant Director and the Investigating Officer (head teacher and chairperson of governors in the case of a school). It is the policy of the Police to welcome early notification of suspected fraud/malpractice.

If the Police decide that a formal investigation is necessary, all staff should co-operate fully with any subsequent requests or recommendations. All contact with the Police following their initial involvement will usually be via the Investigating Officer.

Where the Police decide to formally investigate, this will not prejudice any internal disciplinary procedures; these should continue as normal. However, the internal investigation and the Police's should be co-ordinated to make maximum use of resources and information.

(B) Other External Agencies

Discussions may also have to be held with other external agencies such as Customs and Excise, Department of Work and Pensions, Inland Revenue etc.

5.04.10 REPORTING FRAUD/MALPRACTICE

(A) Interim Report

As soon as the initial "detection" stage of the investigation has been completed, an interim confidential report, which may be verbal but is more likely to be in a written format, should be made by the Investigating Officer to the appropriate Director or the Chief Executive (head teacher and chairperson of governors in the case of a school) and any other officer decided upon at the preliminary stage.

The interim report should set out:

- the findings to date;
- the interim conclusions drawn from those findings; and
- should seek approval to continue the investigation if this is appropriate.

If it is decided to continue the investigation, future reporting arrangements and any changes to the planned action should be confirmed.

(B) Final Report

This report will supersede all other reports and be the definitive document on which management (in a disciplinary situation) and possibly the Police (in a criminal situation) will base their initial decisions.

The format of the final report will not always be the same as each case is unique, but will frequently set out:

- How the investigation arose;
- Who the suspects are;
- Their position in the Authority and their responsibilities;
- How the investigation was undertaken;
- The facts and evidence which were identified;
- Summary of findings and recommendations, both regarding the fraud itself and any additional work required on the system weaknesses identified during the investigation.

This report may indicate the need for disciplinary action or other appropriate action to be taken.

WHILSTLEBLOWING POLICY

Extract from the PUBLIC INTEREST DISCLOSURE ACT (PIDA) 1998
PUBLIC INTEREST DISCLOSURE ACT (PIDA) 1998

Protected disclosures

Meaning of "protected disclosure"

Section 43A a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

Section 43B.(1)In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following—

(a)that a criminal offence has been committed, is being committed or is likely to be committed,

(b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c)that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d)that the health or safety of any individual has been, is being or is likely to be endangered,

(e)that the environment has been, is being or is likely to be damaged, or

(f)that 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

INFORMATION PROVIDED BY:

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Summary of PIDA

The Act came into force on 2nd July 1999. It encourages people to raise concerns about malpractice in the workplace and helps ensure that organisations respond by:

- addressing the message rather than the messenger; and
- resisting the temptation to cover up serious malpractice.

Through protecting whistleblowers from dismissal and victimisation ~~in the following circumstances~~, the Act promotes the public interest.

Malpractice

The Act applies to people at work raising genuine concerns about crime, civil offences (including negligence, breach of contract, breach of administrative law), miscarriage of justice, danger to health and safety or the environment and the cover up of any of these. It applies whether or not the information is confidential and extends to malpractice occurring overseas.

Individuals covered

In addition to employees, it covers trainees, agency staff, contractors, home workers, trainees ~~and every professional in the NHS.~~ school governors, councillors and co-opted members The usual employment law restrictions on minimum length of service and age do not apply. ~~The Act does not presently cover the genuinely self-employed, volunteers, the intelligence services, the army or police officers.~~

Legal Advice

The Act confirms that workers may safely seek legal advice on any concerns they have about malpractice. This includes seeking advice from Public Concern at Work, which is designated a legal advice centre by the Bar Council.

Internal disclosures

A disclosure ~~in good faith~~ to a manager or the employer will be protected if the whistleblower has a reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur and that the disclosure would be made in the public interest. Where a third party is responsible for the matter this same test applies to disclosures made to it.

Disclosures to Ministers

Where someone in the NHS or a public body blows the whistle ~~in good faith~~ direct to the sponsoring Department, the disclosure is protected in the same way as an internal one.

Regulatory disclosures

The Act protects "protected disclosures" made ~~in good faith~~ to prescribed bodies such as the Health and Safety Executive, the Inland Revenue and the Financial Services Authority, where the whistleblower reasonably believes that the information and any allegation in it are substantially true.

Wider disclosures

Wider disclosures (e.g. to the police, the media, MPs and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they meet one of the three preconditions.

Provided they are not made for personal gain, these preconditions are that the whistleblower:

- Reasonably believed he/she would be victimised if he/she raised the matter internally or with a prescribed regulator;
- Reasonably believed a cover-up was likely and there was no prescribed regulator; or
- Had already raised the matter internally or with a prescribed regulator.

In deciding the reasonableness of the disclosure the tribunal will consider the identity of the person to whom it was made, the seriousness of the concern, whether the risk or danger remains, and whether it breached a duty of confidence the employer owed a third party. Where the concern had been raised with the employer or a prescribed regulator, the reasonableness of its response will be particularly relevant. Finally, if the concern has first been raised with the employer, it is relevant whether any whistleblowing policy in the organisation was or should have been used.

Exceptionally serious matters

Where the concern is exceptionally serious, a disclosure will be protected if it meets the test for regulatory disclosures and is not made for personal gain. The disclosure must also be reasonable; having particular regard to the identity of the person it was made to.

Full protection

Where the whistleblower is victimised in breach of the Act he/she can bring a claim to an employment tribunal for compensation. Awards will be uncapped and based on the losses suffered. Additionally where an employee is sacked, he/she may apply for an interim order to keep his/her job. [It should however be noted that an employment tribunal now has the power to reduce any compensation awarded to an employee for detriment or dismissal relating to a protected disclosure by up to 25% where the disclosure was not made in good faith.](#)

Gagging clauses

Gagging clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

WHILSTLEBLOWING POLICY

GUIDANCE NOTE FOR EMPLOYEES

The following guidance should be followed if you suspect fraud or corruption in any area of the Council's activities.

Do

1. Make an immediate note of your concerns.

Note all relevant details, such as what was said in telephone or other conversations, the date, time and the names of any parties involved.

2. Convey your suspicions to someone with the appropriate authority and experience.

This is usually your line manager or the internal audit service. Alternatively, the Chief Finance Officer or the Head of Human Resources should be contacted.

3. Deal with the matter promptly, if you feel your concerns are warranted.

Any delay may cause the Authority to suffer further financial loss.

Don't

1. Do nothing.
2. Be afraid of raising your concerns.

You must not suffer any recrimination as a result of voicing a reasonably held suspicion. The Authority will treat any matter you raise sensitively and confidentially.

3. Approach or accuse any individuals directly.
4. Try to investigate the matter yourself.

There are special rules surrounding the gathering of evidence for use in criminal cases. Any attempt to gather evidence by people who are unfamiliar with these rules may destroy the case.

5. Convey your suspicions to anyone other than those with the proper authority.

Remember the Public Interest Disclosure Act 1998 has the following rules for making a protected disclosure.

~~• You must disclose the information in good faith.~~

- You must believe it to be substantially true.

• Disclosure must be in the public interest.

~~• You must not act maliciously or make false allegations.~~

- You must not seek any personal gain.

• You must not commit a criminal offence by making the disclosure