

# CLASSIFICATION: UNCLASSIFIED

## Appendix D

### LEGAL PROTECTIONS THAT APPLY TO PROTECTED DISCLOSURES

The Council acknowledges the statutory protections of the Employment Rights Act 1996 as amended by the Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013 and is committed to ensuring that those who make “protected disclosures” are not subject to any detriment as a result.

#### **Who is eligible for protection?**

Any worker, or former worker, who makes a “qualifying disclosure”, meaning a disclosure of information which he or she reasonably believes is in the public interest and tends to show that one or more of the following types of malpractice has occurred, is occurring or is likely to occur in the future:

- A criminal offence;
- A failure to comply with applicable legal obligations;
- A miscarriage of justice;
- A threat to any individual’s health and safety;
- Damage to the environment; or
- A deliberate attempt to cover up any of the above.

#### **What is a “Worker”?**

The definition of a ‘worker’ for the purposes of the whistleblower protections is not fixed. The Secretary of State has the power to amend it and may add or remove categories of persons. At the time of writing, “worker” includes:

1. Any individual who satisfies section 230(3) ERA 1996 definition of worker:  
“an individual who has entered into or works under (or where the employment has ceased, worked under) –  
  
(a) a contract of employment; or  
  
(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.”
2. Homeworkers, whether or not the work is to be done by them personally;

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3. Non-employees undergoing training or work experience as part of a training course, otherwise than at an educational establishment;
4. Self-employed doctors, dentists, ophthalmologists and pharmacists in the National Health Service;
5. Agency workers and individuals supplied via an intermediary provided that the terms are not set by the worker themselves; and
6. Police officers.

### **Internal Disclosures and Disclosures to “Other Responsible Persons”**

The whistleblowing legislation is designed to encourage internal disclosures over external disclosures wherever possible.

**Qualifying disclosures made internally, including to a trade union representative where the employer’s procedure permits this (which the Council’s procedure does), will always be protected disclosures.**

Qualifying disclosures which are made to a third party (such as a client or supplier) which the worker reasonably considers responsible for the wrongdoing, or to have responsibility for the area of concern, will also be protected disclosures.

### **Additional Requirements for External Disclosures**

External disclosures are eligible for protection as long as certain additional requirements are satisfied. The requirements to be satisfied in each case depend on the category of person to whom the disclosure is made, as follows:

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### **Disclosures to a “Prescribed Person”**

The Secretary of State operates a statutory list of “prescribed persons” with responsibility for various areas of concern. A full copy of the list is available on the Internet at <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>.

It includes:

- HMRC;
- The Director of the Serious Fraud Office;
- The Financial Conduct Authority;
- The National Crime Agency;
- The Charity Commission;
- The Children’s Commissioner;
- Ofsted
- NSPCC
- Competition and Markets Authority
- The Information Commissioner;
- The Environment Agency;
- The Health and Safety Executive and  
The Care Quality Commission

Qualifying disclosures to prescribed persons will be protected, provided they are made with a reasonable suspicion that the disclosure is substantially true and they are not made for personal gain.

### **Disclosures to a Minister of the Crown**

A qualifying disclosure which is made by a worker employed by a person or body appointed under statute to the relevant Government Minister will be protected, provided it is made with a reasonable suspicion that the disclosure is substantially true.

### **Disclosures to a Legal Advisor**

Any qualifying disclosure made in the course of obtaining legal advice will be protected.

### **Another person or body**

A qualifying disclosure made by a worker to another external organisation, body or individual such as the Police, a Member of Parliament or the media will only be protected if the following requirements are met:

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### **FIRSTLY:**

- The qualifying disclosure must not be made predominantly for personal gain; **and**
- The worker must reasonably suspect that the disclosure is substantially true; **and**
- In all the circumstances of the case it must be reasonable to make the disclosure to the person or body in question.

### **AND SECONDLY:**

The qualifying disclosure must be made in one of the following four circumstances:

- The worker has a concern about misconduct or malpractice of an exceptionally serious nature;
- At the time of making the disclosure, the worker reasonably suspects that as a consequence of making a disclosure to the employer or to a prescribed person, he or she would be subjected to a detriment by the employer;
- Where there is no prescribed person with responsibility for the area of concern and the worker reasonably suspects that if he or she makes a disclosure to the employer, evidence will be concealed or destroyed; or
- Where the worker has already reported substantially the same concern with the employer or with a prescribed person.

**Disclosures to the media will only be protected in exceptional cases and only where no payment is received for the information disclosed.**

### **Protections for Whistleblowers**

- If you are a Council employee and you are dismissed for making a protected disclosure, you will be entitled to make a claim for unfair dismissal.
- If you are not a Council employee but you work for the Council under a service contract and that service contract with the Council is terminated because you have made a protected disclosure, you may be able to make a complaint to an Employment Tribunal about 'detrimental treatment'.
- If you suffer any victimisation, harassment or other detrimental treatment as a consequence of making a protected disclosure (such as demotion, being overlooked for promotion, being refused a reference or being rejected in a future recruitment exercise), you may be able to complain to an Employment Tribunal about 'detrimental treatment'.
- You may also be able to complain to an Employment Tribunal about a future employer that subjects you to a detriment or dismisses you because you made a protected disclosure while working for the Council.