

# Whistle-Blowing Policy

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# Whistle-Blowing Policy

## 1. INTRODUCTION AND PURPOSE OF THE POLICY

- 1.1. Employees are often the first to realise that there may be something of concern occurring within the Council. Usually any issues can be resolved swiftly and satisfactorily. However, when these concerns relate to more serious matters, staff may be discouraged from expressing their concerns or 'whistle-blowing'.
- 1.2. Whistle-blowing is the term used when an employee passes on information concerning alleged wrongdoing. This can also be called 'making a disclosure' or 'blowing the whistle'. Typically (although, not always) the wrongdoing will be something that the employee has witnessed at work.
- 1.3. Employees may feel disloyal and may fear victimisation or harassment. In such circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice. However, any person raising a concern is protected in law.
- 1.4. Whistle-blowing law is embedded in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998). This legislates that an employee has the right to take a case to an employment tribunal if they have been victimised at work or lost their job as a consequence of 'blowing the whistle'.
- 1.5. To be covered by this law, an employee who makes a disclosure must reasonably believe two things:
  - That they are acting in the public interest - therefore personal grievances and complaints are not ordinarily covered by whistle-blowing law.
  - That the disclosure of information indicates past, present or future wrongdoing within the following categories:
    - (a) criminal offences which may include financial impropriety such as fraud.
    - (b) failure to comply with legal obligations.
    - (c) miscarriages of justice.
    - (d) endangering another person's health and safety.
    - (e) damage to the environment.
    - (f) covering up any wrongdoing in any of the above.
- 1.6. Employees are not prevented from making disclosures in the public interest by 'gagging clauses' in settlement or compromise agreements.
- 1.7. The Council is now part of various shared service arrangements and it is important that there is clear guidance for anyone wishing to raise an issue. This policy applies to all employees of the Council, and to individuals working within the organisation who are not employees (e.g. contractors, agency staff, volunteers, Members, staff of associated employers etc.)
- 1.8. The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we wish to encourage employees and others with serious concerns about any aspect of the Council's work to come forward and voice them without fear of reprisal.
- 1.9. This policy is intended to encourage and enable employees to make disclosures at an early stage. Individuals are also encouraged to raise any issues internally with their Council first rather than raising it outside of the organisation. If issues are raised externally in the first instance you may weaken the protection given to you under the Public Interest Disclosure Act 1998.
- 1.10. This policy also seeks to ensure concerns are raised in the right way and seeks to protect those staff members, against whom complaints are made, from malicious allegations. The Council has a duty to investigate all reports of irregularity. This does not mean that the organisation supports the allegation.

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- 1.11. This policy should be read if you are considering raising a concern to provide clarification in relation to the following:
- The type of issues which can be raised.
  - How the person raising a concern will be protected from victimisation and harassment.
  - How to raise a concern.
  - What the Council will do as a consequence of the report.
- 1.12. This policy has been agreed with any relevant trade unions and/or non-union representatives.

## 2. AIMS AND SCOPE OF THE POLICY

2.1 This policy aims to:

- Encourage employees to raise serious concerns at the earliest opportunity and to question and act upon concerns about practice.
- Encourage employees to be watchful for illegal or unethical conduct and report anything of that nature that they become aware of. Everyone should be aware of the importance of preventing and eliminating wrongdoing at work.
- Ensure all reported allegations are treated in absolute confidence, with every effort made by the Council not to reveal a whistle-blower's identity if they so wish. However, it may be necessary for the whistle-blower to become an identified witness at an appropriate time, particularly if it has not been possible to substantiate the allegation by other means. The implications of this and the appropriate support/protection arrangements will be discussed with the whistle-blower. This is detailed at Part 3; Employee Safeguards and Assurances.
- Ensure all reported allegations are treated fairly, ethically and consistently.
- Provide a robust procedure and ensure any matter raised under this procedure will be investigated thoroughly, promptly and confidentially, and the outcome of the investigation reported back to the employee who raised the issue, as appropriate.
- Provide reassurance for those acting in good faith that they will be protected from possible reprisals or victimisation. This means that the continued employment and opportunities for future promotion or training of the employee will not be prejudiced because he or she has raised a legitimate concern. Victimisation of an employee for raising a qualified disclosure is a disciplinary offence.
- If misconduct is discovered as a result of any investigation under this procedure, the Council's disciplinary procedure will be used, in addition to any other appropriate measures. This could include internal criminal investigation by Counter Fraud staff and appropriate further action including prosecution.
- Allow whistle-blowing individuals to raise concerns and proceed further if they are dissatisfied with the Council's response. It should be recognised that certain cases will have to proceed on a confidential basis and that feedback will be limited due to legal constraints.

2.2 This policy is not a substitute for the Council's other policies and procedures on such matters as personal grievances to include bullying and harassment, health and safety, safeguarding issues (children and/or adults) or complaints. It should also not be used to raise matters relating to an employee's own terms and conditions of service.

2.3 There are existing procedures in place to enable employees to lodge a personal grievance relating to their own employment. This process does not form part of this policy. For further guidance on whistle-blowing and grievances, employees can contact the Advisory, Conciliation and Arbitration Service (ACAS) at [www.acas.org.uk/grievances](http://www.acas.org.uk/grievances).

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- 2.4 If a member of the public has a concern about any service they have been provided by the Council then this should be raised as a complaint. There are existing procedures in place which relate to this. However, if that concern relates to malpractice by a member of staff, then they should be directed to a senior member of staff within Human Resources at the earliest opportunity.
- 2.5 If a member of the public has concerns relating to malpractice by a Councillor, then they should be directed to the Monitoring Officer or a senior member of staff within the Human Resources at the earliest opportunity.
- 2.6 Making malicious, vexatious or false allegations will not be tolerated and is a disciplinary offence. If a person makes an allegation in good faith and reasonably believes it to be true, but it is not confirmed by the investigation, the Council will recognise your concern. However, if a person makes an allegation frivolously, maliciously or for personal gain, appropriate action, which could include disciplinary proceedings, may be taken.
- 2.7 An instruction to cover up wrongdoing is itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a manager, employees should not agree to remain silent. They should report the matter to a senior officer (see section 6.3).
- 2.8 This policy and procedure is primarily for issues where the interests of others or of the organisation itself are at risk. That issue may be one of the following (although this list is not exhaustive). The following are examples of concerns that might be raised:
- Financial irregularities including fraud, corruption or unauthorised use of public funds or other assets.
  - Conduct which is against the law, a miscarriage of justice or a failure to meet a legal obligation.
  - Failure to observe health and safety regulations, or actions which involve risks to the public or other employees.
  - Damage to the environment.
  - A criminal offence being committed.
  - Claiming benefits and/or expenses to which there is no entitlement.
  - The conduct of contractors and/or suppliers to the council.
  - Sexual, racial, disability or other discrimination.
  - Neglect or abuse; physical or verbal.
  - Any other unethical conduct, malpractice, negligent or unprofessional behaviour.
  - Discriminatory acts not specifically covered by other procedures.
  - Concealment of any of the above.

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## **3. EMPLOYEE SAFEGUARDS AND ASSURANCES**

### **3.1 Harassment or Victimisation**

- 3.2 The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice.
- 3.3 The Council will not tolerate harassment or victimisation in any form of anyone raising a legitimate concern. Any employee who attempts at any stage to apply any retribution or detriment to a whistle-blower will face serious disciplinary charges.
- 3.4 The Council will support and protect whistle-blowers who raise an issue in line with this policy, in accordance with the safeguards contained in the Public Interest Disclosure Act 1998. This legislation protects everyone from victimisation and dismissal when speaking out against corruption or malpractice at work.
- 3.5 Protection does not mean that if an employee is already the subject of disciplinary action or redundancy procedures that those procedures would cease or be suspended as a result of their whistle-blowing.
- 3.6 It may be that the employee making the report is (or was) directly involved in the action now being raised. In such circumstances it is in the employee's own interest to come forward as soon as possible. The Council cannot promise not to act against such an employee but the fact that they came forward will usually be taken into account.

### **3.7 Confidentiality and Anonymity**

- 3.8 All reports will be treated in the strictest of confidence and every effort will be made to protect, and not disclose, the identity of an informant if that is their wish. However, if disciplinary or other proceedings are an option as a result of the investigation it may not be possible to take any action without further assistance, in which case the informant may be asked to become an identified witness and provide a witness statement. It is possible that the identity of the informant will become obvious during the investigation. In addition there is a risk that some colleagues may speculate about the source of the original complaint.
- 3.9 The law does not compel an organisation to protect the confidentiality of a whistle-blower. However, it is considered best practice to do so unless required by law to disclose it.
- 3.10 The subject of the allegations cannot exercise their normal Subject Access Rights under the Data Protection Act 1998 in seeking disclosure of the source of the allegations thus protecting the informant's identity.
- 3.11 Under the Freedom of Information Act 2000 there are clear examples of mitigation against disclosure; in particular information given in confidence cannot be released under such requests.
- 3.12 At all times the informant will receive full support from the Council. There will be a limited number of people aware of the investigation at any one time but there will always be a representative from Human Resources involved in the process.
- 3.13 This policy encourages a whistle-blower to put their name to an allegation. If you do not reveal your identity then you will not receive a response or feedback. It may also make the task of investigating the allegation and protecting the whistle-blower more difficult.
- 3.14 Concerns can of course be raised anonymously but are much less powerful. They can be considered at the discretion of the Council. In exercising this discretion the factors taken into account would include:
- The seriousness of the allegation.
  - The credibility of the concern.
  - The likelihood of confirming the allegation from other sources.

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## 4. PROCEDURE

4.1 Raising a concern as an employee

4.2 The initial point of contact will depend on the seriousness and sensitivity of the issues involved and who is suspected of wrongdoing. Issues should normally be raised with a senior member of staff within Human Resources. A decision can then be made in relation to how the matter will be dealt with and who should be informed.

4.3 Alternatively an employee can speak to their own manager, a Trade Union or non-union staff representative, or someone they feel comfortable talking to. A third party may also attend any meetings for moral support. A whistle-blower may also wish to take advice from, or invite, a trade union or professional association to raise a matter on their behalf. Meetings may be held away from the workplace if necessary.

### 4.4 Raising a concern as an elected Member

4.5 If an elected Member has any concerns about the Council's work, they should raise the matter directly with the Head of Paid Service, the Monitoring Officer or equivalent Senior Officer. In the case of financial irregularity, disclosure may be made to the Chief Finance Officer.

### 4.6 Raising a concern as a third party contractor, agency staff etc.

4.7 Concerns should be raised with a senior member of staff within Human Resources, the Head of Paid Service, the Monitoring Officer or equivalent Senior Officer. In the case of financial irregularity, disclosure may be made to the Chief Finance Officer.

4.8 There are a number of prescribed bodies and organisations who may be contacted if there is a reason not to raise the matter internally. Please see the attachment appended to this policy – Department for Business Innovation and Skills 'Blowing the Whistle to a prescribed person' June 2015. This provides a comprehensive list with contact details therein. The Council would not ordinarily expect a whistle-blower to make disclosures to the media prior to raising the matter internally. If a person does approach the media with their concerns, the informant should expect in most cases to lose their whistle-blowing law rights.

### 4.9 Process

4.10 Concerns may be raised by telephone, in person or in writing. The earlier the matter is raised, the easier it is to take action. A whistle-blower is asked to provide the nature of the concern and why they believe it to be true, background details giving names, dates and places where possible. An informant will be asked if they have any personal interest in the matter.

4.11 When raising an issue or making an allegation it is important that it is made clear that an informant is doing so as a whistle-blower to ensure they are dealt with correctly.

4.12 Although it is not expected that a person prove beyond doubt that the allegation is correct, it will need to be demonstrated that the allegation has been made in good faith and there are reasonable grounds for concern.

4.13 An informant should:

- Remain calm and not be flustered where possible.
- Make a note of the facts as soon as it is feasible to do so.
- Be specific with dates, times, locations, names etc.
- Deal with the matter promptly.
- Contact someone with the appropriate authority to deal with the matter.

4.14 An informant should not:

- Be reticent because they fear they are wrong.

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- Approach, alert or confront individuals directly themselves.
- Investigate personally – there are important rules of evidence which must be adhered to.
- Consult or discuss the matter with anyone other than those with the correct authority.
- Do nothing or leave it to someone else to report.

- 4.15 If approached by someone wishing to whistle-blow, a person should take full details and contact a senior member of staff within Human Resources to discuss the matter. It is imperative that employees do not undertake any kind of investigation or intelligence gathering exercise which could compromise the evidence.
- 4.16 It may be necessary for a senior member of staff within Human Resources (or other appropriate Officer) to take a preliminary statement to gather more information to entirely understand the situation and nature of the allegation.
- 4.17 The Council has set up arrangements to allow individuals to provide anonymous information. The South West Audit Partnership have a confidential answer phone service (01935 462381) or email address ([confidential@southwestaudit.co.uk](mailto:confidential@southwestaudit.co.uk)). Alternatively the Counter Fraud Unit can be contacted confidentially by telephone (01285 623400 or 01242 264215) or by email ([fraud.referrals@cotswold.gov.uk](mailto:fraud.referrals@cotswold.gov.uk)).

## 5. HOW THE COUNCIL WILL RESPOND

- 5.1 The action taken by the Council will depend on the nature of the issue. The Council will respond to your concerns as quickly as possible; please note that testing the concerns is not the same as accepting or rejecting them.
- 5.2 The overriding principle for the Council will be the public interest. In order to be fair to all employees, including those who may be wrongly or mistakenly accused, initial independent enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. This decision will be made by a senior member of staff within Human Resources, The Head of Paid Service, The Monitoring Officer, the Chief Finance Officer or equivalent Senior Officer. The matters raised may be:
- Investigated internally, either in accordance with internal policy and procedure or in line with criminal investigative regulations where appropriate. Whilst not all allegations will result in criminal action, this is an option open to the Council and it is thus critical that the investigation is conducted in the appropriate manner. Evidence gathered as part of that investigation could form part of the disciplinary process whether or not criminal proceedings commence.
  - Referred to the Police or other external enforcement agency such as the Health and Safety Executive, Environment Agency etc.
  - Referred to the External Auditor.
  - Form the subject of an independent enquiry.
- 5.3 Concerns or allegations which fall within the scope of existing procedures will normally be referred for consideration under those procedures. In some situations the matter may be resolved without the need for an investigation. Urgent and immediate action may be necessary where the security of relevant information is at risk or to protect the safety of individuals
- 5.4 If an investigation is appropriate, it may be necessary for this to be carried out under terms of strict confidentiality, i.e. by not informing the subject of the complaint until (or if) it becomes necessary to do so. However, in certain cases, such as allegations of ill treatment of others, suspension from work may have to be considered immediately. Protection of others is paramount in all cases.
- 5.5 Within ten working days of a concern being raised, the whistle-blower will receive the following in writing:

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- Acknowledgement that the concern has been received.
  - Confirmation of how the Council proposes to deal with the matter.
  - If an investigation is to take place, who will be conducting the investigation.
  - If further investigation is not appropriate, the reasons why.
  - Process information and staff support mechanisms.
- 5.6 Contact between the whistle-blower and the Officers considering the issues and/or conducting an investigation will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If the matter is on-going then feedback may be limited; if the matter is dealt with promptly then the whistle-blower will be advised on the outcome.
- 5.7 You need to be assured that your disclosure has been properly addressed. Unless there are any legal reasons why this cannot be done, you will be kept informed of the progress and outcome of any investigation.
- 5.8 Coordination of any investigation will be undertaken by an appropriate Officer with the authority to do so. The investigator will have the authority to access all necessary data and other resources pertinent to a full, fair and properly conducted investigation.
- 5.9 The investigation process is independent and will seek to determine whether an irregularity has been committed, and if so, by whom.
- 5.10 Once an investigation has been completed there are a number of potential outcomes including the following:
- No case to answer; case closed.
  - Informal action.
  - Formal action; disciplinary action and/or prosecution by the Council. Suspension may also be appropriate.
  - External referral to the Police and/or other body.
- 5.11 The Council will do what it can to minimise any difficulties that you may experience as a result of raising a concern. For instance, if you are asked to give evidence in criminal or disciplinary proceedings, the Council will arrange for you to receive appropriate advice and support.
- 5.12 If a member of staff is dissatisfied with the conduct of an investigation, whether as the person under investigation, as the informant, or in any other involved capacity, a complaint may be raised with the Head of Paid Service. A review may then take place.
- 5.13 This Policy does not prevent any person from taking external legal advice.
- 6. RESPONSIBILITIES**
- 6.1 Managers should ensure all staff, including agency staff, consultants and contractors etc. are aware of and follow Council Policies and Procedures. Managers should register any whistle-blowing cases brought to their attention immediately with a senior member of staff within Human Resources and provide support to any employee making such a complaint.
- 6.2 Employees should be vigilant and raise any serious concerns about aspects of work or practices which affect the integrity of the Council or safety of employees and/or the public.
- 6.3 Chief Officers – a senior member of staff within Human Resources, Head of Paid Service, Monitoring Officer, Head of Democratic Services (where applicable), Chief Finance Officer, Director or equivalent will respond to whistle-blowing submissions positively and within the timescales set out. The Head of Paid Service has overall responsibility for ensuring that the Council adheres to this Policy.

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6.4 Human Resources will record and deal with any whistle-blowing issues including the provision of any support and advice as required to include attendance at meetings as necessary.

## **7. FURTHER INFORMATION**

7.1 Further information on Council policy can be found in the following documents (or equivalent documentation / codes) :

- The Constitution.
- Code of Conduct for Employees and the Members Code of Conduct which include information in relation to gifts and hospitality and declaring and registering interests.
- Counter Fraud and Anti-Corruption Policy.
- Prosecution Policy.
- Anti-Money Laundering and Proceeds of Crime Policy.
- Recruitment and Selection Policy.
- RIPA Procedure and Guidance.
- Counter Fraud and Anti-Corruption Investigation Procedures and Guidelines.
- Financial Rules.
- Contract Rules or equivalent.
- Fair Processing Statement.
- Disciplinary and Grievance Procedures.

## **8. STRATEGY AND POLICY REVIEW**

8.1 The appropriate department will review and amend this strategy as necessary to ensure that it continues to remain compliant and meets legislative requirements and the vision of the Council.

8.2 Responsible Department: Counter Fraud Unit

Date: November 2017

Review frequency as required by legislative changes / every three years.