

## Whistleblowing Policy

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Head of Human Resources

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January 2018	1.1	Update to include further reporting choices / information
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## 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 or its wholly owned company, Publica. The majority of issues can be resolved swiftly and satisfactorily however, when these concerns relate to more serious matters, employees may be discouraged from expressing their concerns or 'whistleblowing'.
- 1.2. Whistleblowing is the term used when an employee passes on information concerning 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. Whistleblowing law is embedded in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998). This legislation provides 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:
  - 1. That they are acting in the public interest:
    - (a) This can be referring to considerations which affect the good order and functioning of the Council for the benefit of its constituents.
    - (b) Public interest can also be described as being for the benefit of society, the public or the community as a whole. Personal grievances and complaints are therefore not ordinarily covered by whistleblowing law unless it is within the public interest or where bullying, harassment or discrimination concerns a number of employees or is affecting their rights in a significant way.
  - 2. 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) sexual harassment that has or is likely to occur.

- (g) 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 Non-Disclosure Agreements. In short, where an employee wishes to make a disclosure that is in the public interest and relates to wrongdoing as detailed above, this cannot be prevented by a clause within a Settlement or Non-Disclosure Agreement.
- 1.7. The Council and Publica are 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, Publica. Whilst the same protections may not be as directly applicable to individuals working within the organisations who are not employees (e.g. contractors, agency employees, volunteers, Councillors, employees of associated employers etc.), all are encouraged to read this Policy and report any concerns confidentially for investigation.
- 1.8. The Council and Publica are 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 work carried out by any of the organisations 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, rather than waiting. Employees are also encouraged to raise any issues internally with the Council and/ or Publica first rather than raising it outside of the organisations. 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 employees against whom complaints are made from malicious allegations. The Council and Publica have a duty to investigate all reports of irregularity. This does not mean that the organisations support the allegation.
- 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 and Publica will do as a consequence of the report.

1.12. This Policy has been agreed with any relevant trade unions 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 potential malpractice.
- Encourage employees to be watchful for illegal or unethical conduct and report anything of that nature of which they become aware. 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 and Publica not to reveal a whistleblower's identity if they so wish. However, it may be necessary for the whistleblower 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 whistleblower. 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 making a referral 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 relevant organisation's disciplinary procedure will be used, in addition to any other appropriate measures. This could include internal criminal investigation and appropriate further action.
- Allow whistleblowers to raise concerns and proceed further if they are dissatisfied with the organisational 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.

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- 2.2. This Policy is not a substitute for other policies and procedures on such matters as personal grievances, 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 grievance relating to their own employment. This process does not form part of this Policy. For further guidance on whistleblowing and grievances, employees can contact the Advisory, Conciliation and Arbitration Service (ACAS) at [www.acas.org.uk/grievances](http://www.acas.org.uk/grievances)
- 2.4. If a member of the public has a concern about any service they have been provided by the Council or Publica then this should be raised appropriately as a complaint or as a general concern or observation to be considered. There are existing procedures in place which relate to this. However, if that concern relates to malpractice by an employee, then they should be directed to 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 Democratic Services or the Monitoring Officer for the appropriate Council 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 that they reasonably believe to be true, but it is not confirmed by the investigation, the Council and Publica 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 and should report the matter at the earliest opportunity.
- 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.

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

#### **3.1. Harassment or Victimisation**

- 3.2. The Council and Publica recognise 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 and Publica 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 whistleblower will face serious disciplinary charges.
- 3.4. The Council and Publica will support and protect whistleblowers 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 whistleblowing.
- 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 and Publica cannot promise not to act against such an employee but the fact that they came forward may be taken into account.

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- 3.7. If the whistleblowing referral raises any safeguarding issues they will be dealt with in accordance with the relevant Safeguarding Policies.
- 3.8. **Confidentiality and Anonymity**
- 3.9. 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.
- 3.10. The law does not compel an organisation to protect the confidentiality of a whistleblower. However, it is considered best practice to do so unless required by law to disclose it.
- 3.11. Any requests for disclosure of information relating to or collected as part of any whistleblowing complaint or investigation will be considered and determined in accordance with the relevant provisions of the Freedom of Information Act 2000 and Data Protection Regulations / Legislation.
- 3.12. At all times the informant will receive full support from the Council and Publica. 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 whistleblower 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 whistleblower 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 and Publica. 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.
- 3.15. Employees who whistleblow can seek independent support from the charity Protect. Details can be found by following the link below.

<https://protect-advice.org.uk/>

#### **4 PROCEDURE**

##### **4.1. Raising a concern as an employee**

4.2. An employee can choose who to report a concern to.

4.3. As a guide, issues should normally be raised with a member of the Human Resources Team. A decision can then be made in relation to how the matter will be dealt with and who should be informed depending on the seriousness and sensitivity of the issues involved and who is suspected of wrongdoing.

4.4. Employees may also direct any concerns to Internal Audit or the Counter Fraud and Enforcement Unit.

4.5. Alternatively, an employee can speak to their own manager, or someone they feel comfortable talking to but must outline that they are making a whistleblowing disclosure.

4.6. A third party or Union representative may also attend any meetings for moral support however they would be required to maintain confidentiality. A whistleblower 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.

##### **4.7. Raising a concern as an elected Member**

4.8. If an elected Member has any concerns about the work conducted by the Council or Publica, they should raise the matter directly with, the Chief Executive / Head of Paid Service or the Monitoring Officer. In the case of financial irregularity, disclosure may be made to the Officer appointed under Section 151 of the Local Government Act 1972 ('Section 151 Officer').

4.9. Concerns may also be directed to Internal Audit or the Counter Fraud and Enforcement Unit.

##### **4.10. Raising a concern as a third-party contractor, agency employees etc.**

4.11. Concerns should be raised with the Head of Human Resources, the Chief Executive or the Monitoring Officer. In the case of financial irregularity, disclosure may be made to the Section 151 Officer.

4.12. Concerns may also be directed to Internal Audit or the Counter Fraud and Enforcement Unit.

4.13. Disclosures can be made to the Officers as detailed in this Policy or to their nominated Deputy Officer.

4.14. **Alternative Reporting Routes**

4.15. There are a number of prescribed bodies and organisations who may be contacted if there is a reason not to raise the matter internally. Employees can find guidance by following the link below which provides a comprehensive list with contact details therein.

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>

4.16. Publica employees may also raise concerns with one of the Company Non-Executive Directors if they feel they cannot raise concerns with those listed under 4.1 of this Policy.

4.17. In the case of Local Government, that would include raising concerns with the Council's External Auditor (to establish who this is, contact Public Sector Audit Appointments Limited <https://www.psaa.co.uk>). If the concerns relate to the conduct of public business, value for money or fraud and corruption relating to the provision of public services, employees may contact the National Audit Office <https://www.nao.org.uk>. If matters relate to failures to comply with environmental law, employees may contact the Office for Environmental Protection <https://www.theoep.org.uk>

4.18. The Council and Publica would not ordinarily expect a whistleblower 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 whistleblowing law rights.

4.19. **Process**

4.20. 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 whistleblower 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, together with any other supporting evidence or information. An informant may be asked if they have any personal interest in the matter.

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

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4.22. Although it is not expected that a person proves beyond doubt that the allegation is correct, it will need to be demonstrated that there are reasonable grounds for concern.

4.23. A whistleblower should:

- Make a referral after consideration of the facts in a calm manner.
- 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.

4.24. A whistleblower should not:

- Be reticent because they fear they are wrong.
- Approach, alert or confront the person they suspect of wrongdoing, 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.

4.25. If approached by someone wishing to whistleblow, a person should take full details and contact a member of the Human Resources Team 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.

4.26. It may be necessary for 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.

## 5 HOW THE COUNCIL AND PUBLICA WILL RESPOND

5.1. The action taken by the Council and Publica will depend on the nature of the issue. The Council and Publica will respond to your concerns as quickly as possible. Please note that making initial enquiries about the concerns is not the same as accepting or rejecting them.

5.2. The overriding principle for the Council and Publica 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 Human Resources, the relevant Council Statutory Officers (the Chief Executive/Head of Paid Service, the Monitoring Officer or the Section 151 Officer) or in the case of Publica employees, Publica Directors. Where the matter relates to a Statutory Officer, appropriate steps will be taken in accordance with contractual arrangements and in accordance with legislation. 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 Publica, 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 employees.

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 whistleblower will receive the following in writing:

- Acknowledgement that the concern has been received (where possible acknowledgement should be issued within three working days).
- Confirmation of how the Council and Publica propose 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 employees support mechanisms.

5.6. Contact between the whistleblower and the Officers considering the issues and/or conducting an investigation will depend on the nature of the matters raised, the

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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 whistleblower 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 a member of Human Resources with the authority to do so.
- 5.9. The investigation process is independent and will seek to determine whether an irregularity has been committed, and if so, by whom. The investigator will have the authority to access all necessary data and other resources pertinent to a full, fair and properly conducted investigation.
- 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 appropriate body. Suspension may also be appropriate. (For information relating to these outcomes see the relevant internal Policy or Procedure where applicable which will detail processes, actions and appeal information).
  - External referral to the Police and/or other body.
- 5.11. The Council and Publica 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 and Publica will arrange for you to receive appropriate advice and support.
- 5.12. If an employee 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 Human Resources who will ensure this is reviewed by an employee who is independent and who has not previously been involved in the investigation.
- 5.13. This Policy does not prevent any person from taking external legal advice.

## **6 RESPONSIBILITIES**

- 6.1. Managers should ensure all employees, including agency employees, consultants and contractors etc. are aware of and follow all Council and Publica Policies and Procedures. Managers should register any whistleblowing cases brought to their attention immediately with 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 and Publica or safety of employees and/or the public.
- 6.3. Statutory Officers, Publica Directors and Senior Managers will respond to whistleblowing submissions positively and within the timescales set out. The Chief Executive / Head of Paid Service and Managing Director has overall responsibility for ensuring that the Policy is adhered to.
- 6.4. Human Resources will record and deal with any whistleblowing issues including the provision of any support and advice as required to include attendance at meetings as necessary.

## **7 POLICY REVIEW**

- 7.1. The Counter Fraud and Enforcement Unit and Human Resources will review and amend this Policy as necessary to ensure that it continues to remain compliant and meets legislative requirements and the vision of the Council and Publica.
- 7.2. Human Resources and the Counter Fraud and Enforcement Unit will monitor the effectiveness of the Policy and provide the necessary awareness sessions to employees.