

REPORT OF THE MONITORING OFFICER

WHISTLEBLOWING

Purpose of the Report

1. To seek approval to amend the current Whistleblowing Policy in accordance with legislative changes.
2. To update Committee on Whistleblowing concerns which have been raised.

Information and Advice

3. 'Whistleblowing' means the reporting by employees of suspected misconduct, illegal acts or failure to act within the Council. The aim of the Whistleblowing Policy is to encourage employees and others who have serious concerns about any aspect of the Council's work to come forward and voice those concerns. The Policy is designed to ensure that employees can raise concerns without fear of victimisation, subsequent discrimination, disadvantage or dismissal. It is also intended to encourage and enable employees to raise serious concerns within the Council rather than ignoring a problem or 'blowing the whistle' outside the Council. The intention is to enable those who suspect wrongdoing in the County Council to report their concerns at the earliest opportunity so that they can be properly investigated. The Policy also informs employees how they can legitimately pursue the matter outside the Council if they are not satisfied with how the matter has been dealt with.
4. Employees who raise concerns under the Whistleblowing Policy have some protection against victimisation and dismissal under the law. The Public Interest Disclosure Act 1998 ("**Act**") protects certain disclosures made by employees. The concerns raised by an employee need to be made in the public interest and comply with the relevant requirements set out in the Act in order for the employee to be protected. The dismissal of an employee will be automatically unfair if the reason, or principal reason, for their dismissal is that they have made a "protected disclosure". The Act also protects workers from being subjected to any detriment on the ground that they have made a "protected disclosure"

Recent developments

5. Recent changes have been made in order to strengthen the law in a number of respects. This follows concerns that potential whistleblowers may still be being discouraged from raising concerns. A recent report concerning an NHS trust exposed a staff culture that deterred whistleblowers from raising concerns.
6. The test to determine whether a disclosure is a “protected disclosure” has been changed and requires the employee to make the disclosure in the “public interest”, replacing the old test which required disclosures to be made in “good faith”. This change is intended to address a concern held by some that individuals may have been deterred from making a disclosure over fear that their motive for doing so could be challenged. The new test applies to disclosures made on or after 25 June 2013.
7. The Whistleblowing Policy has been reviewed and minor updates are proposed. A copy of the Policy including proposed revisions is attached as the **Appendix** to this report. The revisions can be summarised as follows:
 - a. Replacing references to “good faith” with appropriate wording having regard to the relevant legislative changes;
 - b. Updating job titles;
 - c. Confirming that Policy Committee has responsibility for reviewing the Policy and that an annual report will be produced.
8. The other changes that have been introduced under the statutory reforms concerning whistleblowing affect how cases are dealt with at employment tribunals and will not affect the content of the Whistleblowing Policy.

Future Developments

9. The Government are currently considering whether further legislative changes are required to protect whistleblowers or encourage them to come forward about wrongdoing.

Concerns Raised

10. The County Council logs concerns it receives centrally on its corporate register. All matters which fall under the Whistleblowing Policy are required to be reported to the Monitoring Officer.
11. During the period November 2012 to November 2013, five concerns were reported under the Whistleblowing Policy. Four related to misapplication of Council policies and one related to undue influence. Outcomes can be summarised as follows: -
 - a. 2 x no substance
 - b. 1 x internal action taken;
 - c. 2 x investigation on-going.

Promoting awareness

12. Whilst the low volume of concerns raised is a positive indication; it could equally reflect a, “culture of silence”. Therefore, it is important to ensure that the effectiveness of the Whistleblowing Policy is kept under review and that it is well publicised. It is therefore considered appropriate to publicise the Policy as follows:

- Publication of an article highlighting the Policy in Frontline - the staff magazine;
- News article published on the Council’s intranet home page;
- News article to be published in the Council’s Team Talk (departmental news bulletin).

A copy of the Policy is readily available via the Council’s intranet and on the public website.

Other Options Considered

1. No other options are appropriate.

Reason/s for Recommendation/s

1. Since the Whistleblowing Policy was last reviewed there have been amendments to the relevant legislation (the Public Interest Disclosure Act 1998). It is considered necessary to update the Policy at this time to take account of the introduction of the ‘public interest’ test.
2. It is important to ensure employees are aware of the Whistleblowing Policy, and therefore it is considered worthwhile to continue promoting and publicising the Policy.

Statutory and Policy Implications

3. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) That the Whistleblowing Policy is amended as set out in the Appendix to the report.
- 2) That the revised Whistleblowing Policy be promoted as considered appropriate.

Jayne Francis-Ward
Monitoring Officer

For any enquiries about this report please contact: Simon Gill (t: 0115 977 3620)

Constitutional Comments (SLB 03/12/2013)

4. Policy Committee is the appropriate body to consider the content of this report.

Financial Comments (SEM 03/12/13)

5. There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- Whistleblowing Policy

Electoral Division(s) and Member(s) Affected

- All

Appendix

Nottinghamshire County Council Whistle Blowing Policy (Confidential Reporting)

1. What is Whistleblowing?
2. What is the aim of the Policy and when does it apply?
3. Protecting the Whistleblower
4. Raising a Concern
5. What the Council will do
6. The Responsible Officer
7. How the matter can be taken further
8. Review of the Policy
9. Corporate Recording and Monitoring

1. What is Whistleblowing?

In this policy 'Whistleblowing' means the reporting by employees of suspected misconduct, illegal acts or failure to act within the Council.

The aim of this Policy is to encourage employees and others who have serious concerns about any aspect of the Council's work to come forward and voice those concerns.

Employees are often the first to realise that there may be something seriously wrong within the Council. 'Whistleblowing' is viewed by the Council as a positive act that can make a valuable contribution to the Council's efficiency and long-term success. It is not disloyal to colleagues or the Council to speak up. The Council is committed to achieving the highest possible standards of service and the highest possible ethical standards in public life and in all of its practices. To help achieve these standards it encourages freedom of speech.

If you are considering raising a concern you should read this Policy first. It explains:

- the type of issues that can be raised
- how the person raising a concern will be protected from victimisation and harassment
- how to raise a concern, and
- what the Council will do

If you are unsure whether to use this Policy or want independent advice at any stage, you may contact the independent charity **Public Concern at Work** on **020 7404 6609**. Their advisers can give you free confidential advice on how to raise a concern about serious malpractice at work.

2. What is the aim of the Policy and when does it apply?

2.1. Aims of the Policy

The Policy is designed to ensure that you can raise your concerns about wrongdoing or malpractice within the Council without fear of victimisation, subsequent discrimination, disadvantage or dismissal.

It is also intended to encourage and enable you to raise serious concerns **within** the Council rather than ignoring a problem or 'blowing the whistle' outside.

This Policy aims to:

- encourage you to feel confident in raising serious concerns at the earliest opportunity and to question and act upon concerns about practice
- provide avenues for you to raise those concerns and receive feedback on any action taken
- ensure that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied
- reassure you that you will be protected from possible reprisals or victimisation if you have made any disclosure in good faith.

2.2. Scope of this Policy

This Policy is intended to enable those who become aware of wrongdoing in the County Council affecting some other person or service, to report their concerns at the earliest opportunity so that they can be properly investigated.

The Whistle Blowing Policy is not intended to replace existing procedures:

- If your concern relates to your own treatment as an employee, you should raise it under the existing grievance or harassment procedures
- If a client has a concern about services provided to him/her, it should be raised as a complaint to the County Council
- Complaints of misconduct by County Councillors are dealt with under a separate procedure (for further information please contact the Council's Monitoring Officer)

2.3. Who can raise a concern under this Policy?

The Policy applies to all:

- employees of Nottinghamshire County Council*
- employees of contractors working for the Council, for example, agency staff, builders and drivers
- employees of suppliers
- those providing services under a contract or other agreement with the Council in their own premises, for example care homes, and
- voluntary workers working with the Council

* If you are employed in, working with or assisting Nottinghamshire schools there is a specific whistleblowing code for you because of the special relationship that exists with the schools' governing bodies.

2.4. What should be reported?

Any serious concerns that you have about service provision or the conduct of officers or members of the Council or others acting on behalf of the Council that:

- make you feel uncomfortable in terms of known standards;
- are not in keeping with the County Council's Constitution and policies;
- fall below established standards of practice; or
- are improper behaviour.

These might relate to:

- conduct which is an offence or a breach of the law (a criminal offence has been committed or failing to comply with any other legal obligation)
- disclosures related to miscarriages of justice
- racial, sexual, disability or other discrimination
- health and safety of the public and/or other employees
- damage to the environment
- unauthorised use of public funds or other assets
- possible fraud and corruption
- neglect or abuse of clients, or
- other unethical conduct.

This list is not exhaustive.

3. Protecting the Whistleblower

3.1. Your legal rights

This policy has been written to take account of the Public Interest Disclosure Act 1998 which protects workers making disclosures about certain matters of concern, when those disclosures are made in accordance with the Act's provisions and in the public interest.

The Act makes it unlawful for the Council to dismiss anyone or allow them to be victimised on the basis that they have made an appropriate lawful disclosure in accordance with the Act.

Rarely, a case might arise where it is the employee that has participated in the action causing concern. In such a case it is in the employee's interest to come into the open as soon as possible. The Council cannot promise not to act against such an employee, but the fact that they came forward may be taken into account.

3.2. Harassment or Victimisation

The Council is committed to good practice and high standards and to being supportive of you as an employee.

The Council recognises that the decision to report a concern can be a difficult one to make. If you honestly and reasonably believe what you are saying is true, you should have nothing to fear because you will be doing your duty to your employer, your colleagues and those for whom you are providing a service.

The Council will not tolerate any harassment or victimisation of a whistleblower (including informal pressures) and will take appropriate action to protect you when you raise a concern in good faith and will treat this as a serious disciplinary offence which will be dealt with under the disciplinary rules and procedure.

3.3. Support to you

Throughout this process:

- you will be given full support from senior management
- your concerns will be taken seriously, and
- the County Council will do all it can to help you throughout the investigation

If appropriate, the Council will consider temporarily re-deploying you for the period of the investigation.

For those who are not County Council employees, the Council will endeavour to provide appropriate advice and support wherever possible.

3.4. Confidentiality

All concerns will be treated in confidence and every effort will be made not to reveal your identity if that is your wish. If disciplinary or other proceedings follow the investigation, it may not be possible to take action as a result of your disclosure without your help, so you may be asked to come forward as a witness. If you agree to this, you will be offered advice and support.

3.5. Anonymous Allegations

This Policy encourages you to put your name to your allegation whenever possible. If you do not tell us who you are it will be much more difficult for us to protect your position or to give you feedback. This policy is not ideally suited to concerns raised anonymously.

Concerns expressed anonymously are much less powerful but they may be considered at the discretion of the Council. In exercising this discretion the factors to be taken into account would include:

- the seriousness of the issue raised
- the credibility of the concern, and
- the likelihood of confirming the allegation from other sources

3.6. Untrue Allegations

If you make an allegation in good faith and reasonably believing it to be true, but it is not confirmed by the investigation, the County Council will recognise your concern and you have nothing to fear. If however, you make an allegation frivolously, maliciously or for personal gain, appropriate action that could include disciplinary action, may be taken.

4. Raising a Concern

4.1. Who should you raise your concern with?

This will depend on the seriousness and sensitivity of the issues involved and who is suspected of the wrongdoing. You should normally raise concerns with:

- Your Line Manager
- Your Departmental Corporate Director
- The Monitoring Officer on **0115 977 3967**
- The Chief Executive on **0115 977 3582**

The address for correspondence is **Nottinghamshire County Council County Hall West Bridgford Nottingham NG2 7QP**.

If, exceptionally, the concern is about the Chief Executive of the Council your concern should be raised with the Leader of the Council who will decide how the investigation will proceed. This may include external investigation.

If you are unsure who to contact you may call the independent charity **Public Concern at Work** on **0207 404 6609** for advice.

4.2. How to raise a concern

You may raise your concern by telephone, in person or in writing. The earlier you express your concern, the easier it is to take action. You will need to provide the following information:

- the nature of your concern and why you believe it to be true
- the background and history of the concern (giving relevant dates)

Although you are not expected to prove beyond doubt the truth of your suspicion, you will need to demonstrate to the person contacted that you have a genuine concern relating to suspected wrongdoing or malpractice within the Council and there are reasonable grounds for your concern.

You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns.

You may invite your trade union, professional association representative or a friend to be present for support during any meetings or interviews in connection with the concerns you have raised.

5. What the Council will do

The Council will respond to your concerns as quickly as possible. Do not forget that testing your concerns is not the same as either accepting or rejecting them.

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 enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take.

The investigation may need 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. In certain cases however, 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.

Where appropriate, the matters raised may:

- be investigated by management, internal audit, or through the disciplinary/grievance process
- be referred to the police
- be referred to the external auditor
- be referred and put through established child protection/abuse procedures
- form the subject of an independent inquiry

Within ten working days of a concern being raised, the person investigating your concern will write to you:

- acknowledging that the concern has been received
- indicating how the County Council proposes to deal with the matter
- supplying you with information on staff support mechanisms
- telling you whether further investigations will take place and if not, why not.

The amount of contact between you and the officers considering the issues will depend on the nature of the matters raised, the potential difficulties involved and the clarity of your information. It is likely that you will be interviewed to ensure that your disclosure is fully understood.

Any meeting can be arranged away from your workplace, if you wish, and a union or professional association representative or a friend may accompany you in support.

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.

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.

6. The Responsible Officer

The Monitoring Officer has overall responsibility for the maintenance and operation of this Policy.

7. How the Matter can be Taken Further

This Policy is intended to provide you with an avenue within the Council to raise concerns. The Council hopes you will be satisfied with any action taken. If you are not, and you feel it is right to take the matter outside the Council, the following are the Council's prescribed contacts:

- the External Auditor:
David Brumhead
Audit Commission
First Floor
Bridge Business Park
Bridge Park Road
Thurmaston
Leicester
LE4 8BL
- your trade union
- the police
- other relevant bodies prescribed by legislation – the Council's Monitoring Officer or Public Concern at Work will be able to advise you who you can contact

If you raise concerns **outside** the Council you should ensure that it is to one of these prescribed contacts. A public disclosure to anyone else could take you outside the protection of the Public Interest Disclosure Act and of this Policy.

You should not disclose information that is confidential to the Council or to anyone else, such as a client or contractor of the Council, except to those included in the list of prescribed contacts.

This Policy **does not** prevent you from taking your own legal advice.

8. Review of the Policy

The County Council's Policy Committee will review this Policy annually.

9. Corporate Recording and Monitoring

The Monitoring Officer will maintain a corporate register containing all concerns that are brought to her attention. All officers allocated to look into a concern must ensure the Monitoring Officer is provided with sufficient details for the corporate register.

The Monitoring Officer will review the corporate register and produce an annual report for Policy Committee. The report will include a summary of the concerns raised, to which department they related, the post to which the concerns related (if not confidential) and any lessons learned. The report will not include any employee names. The aim of this is to ensure that:

- the Council and/or the relevant department learns from mistakes and does not repeat them, and
- consistency of approach across the departments

The corporate register together with the annual reports will be available for inspection by internal and external audit, after removing any confidential details.