



Policy and Resources Committee 4 November 2019

Draft Whistleblowing Policy

Purpose of report

To make minor amendments to the Whistleblowing Policy and to confirm its adoption which ensures best practice

Attachment

Appendix 1 Whistleblowing Policy 2019

1.0 Background

- 1.1 Whistleblowing is defined as “making a disclosure that is in the public interest”. A whistleblower is a person who exposes any kind of information or activity that is deemed illegal, dishonest or not correct within an organisation.
- 1.2 The Council’s Whistleblowing Policy forms part of the governance framework for the council. It provides a framework for anyone (employees, councillors, contractors or members of the public) who has information about major concerns that fall outside other procedures (including, for example, potential fraud, bribery & corruption, weakness in financial or other systems such as health & safety) to bring the matter to the council’s attention in a confidential manner. It also provides protection for those that ‘blow the whistle’ to ensure that they are not harassed or victimised as a result.
- 1.3 While the Whistleblowing Policy is for anyone to use, the primary legislative aim of having such a policy is to provide protection for workers who “blow the whistle” on wrongdoing at work. Historically, not all whistle blowers have not been treated well so statutory provisions were made in the Public Interest Disclosure Act 1998. It should be noted that, to qualify for protection, the disclosure or ‘whistle blowing’ must be of information, not an allegation, expression of opinion or position statement.

2.0 Important issues to consider

- 2.1 The Policy was last reviewed in 2017 and it was considered appropriate that an updated version should be produced. There have been not substantive legislative changes since it was last reviewed.

3.0 Equality and Diversity Implications

- 3.1 An initial Equality Impact has been carried out and all equality and diversity implications are neutral. Neither a positive nor a negative impact has been identified.

4.0 Privacy Impact Implications

- 4.1 There are no implications.

5.0 Legal Implications

- 5.1 The statutory provisions are contained in the Public Interest Disclosure Act 1998,

Employments Rights Act 1996 and the Enterprise and Regulatory Reform Act 2013 and have been taken into consideration in preparing this Report and the Policy.

6.0 Risk Management

6.1 The approval of the Policy ensures transparency and good governance by providing a procedure for raising and dealing with major concerns.

7.0 Resource and Financial Implications

7.1 There are no financial implications related to approving the Policy.

8.0 Constitutional Implications

8.1 None

9.0 Implications for our Customers

9.1 The whistleblowing Policy is published on the council’s website and is accessible to customers as well as employees.

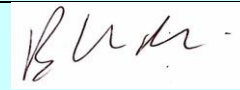
10.0 Corporate Outcomes

10.1 This Policy ensures compliance with legislation and good governance ensuring transparency and accountability of the council in the way it operates as an employer and for its community. .

11.0 Recommendation

11.1 The Committee is recommended to

- (1) Approve the minor amendments and adopt the whistleblowing Policy attached at Appendix 1 to this report.

Legal	Power: Public Interest Disclosure Act 1998				
	Other considerations:				
Background Papers:					
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East
Northamptonshire
Council

Whistleblowing Policy



2019

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Change History

Issue	Date	Comments
0.1 – 0.4	2008	Initial Draft
1.0	24.11.08	Signed off by Standards Board
2.0	21.11.11	Monitoring Officer revisions
3.0	7.1.17	Monitoring Officer Revisions for consideration by P&R
3.1	17.1.17	Final version post P&R approval
3.2	15.10.19	Updated by Interim MO Babs Morris

NB: Draft versions 0.1 – final published versions 1.0

Consultees

Internal	External
eg Individual(s)/Group/Section	eg Stakeholders/Partners/Organisation(s)
Policy and Resources Committee	

Distribution List

Internal	External
eg Individual(s)/Group/ Section	eg Stakeholders/Partners/Organisation(s)
All staff via Council Intranet (Hub)	Public and Partners via Council Website

Links to other documents

Document	Link
Code of Conduct	Part 5 of Constitution on Council website – see http://www.east-northamptonshire.gov.uk/constitution
Bullying and Harassment Policy	See Staff Management Policy on Council Intranet
Counter Fraud Policy	http://www.east-northamptonshire.gov.uk/downloads/file/9234/corporate_counter_fraud_strategy
Safeguarding Children, and Young People and Policy	http://www.east-northamptonshire.gov.uk/downloads/file/3495/safeguarding_children_and_young_people_policy

Additional Comments to note

2016 Review to include provisions of Enterprise and Regulatory Reform Act 2013

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1.0 Introduction & Summary

- 1.1 Whistleblowing is defined as “making a disclosure that is in the public interest”. A whistle-blower is a person who exposes any kind of information or activity that is deemed illegal, dishonest or not correct within an organization
- 1.2 The point of this Whistleblowing policy is to encourage and enable employees, councillors, contractors, partners or members of the public to raise serious concerns with the Council, rather than overlooking a problem or 'blowing the whistle' outside. The purpose of this policy is to make clear that such concerns can be reported without fear of victimisation, discrimination or disadvantage.
- 1.3 Anyone who has a genuine concern about potential fraud, corruption, bribery, or weak financial systems, is encouraged to bring it to the Council's attention (in confidence) to any of the following:
- Any Head of Service
 - Section 151 Officer
 - Monitoring Officer - mo@east-northamptonshire.gov.uk,

Names and contact details for all of the above can be obtained from the Council's website (www.east-northamptonshire.gov.uk). All of the above are required by the Council to take such concerns seriously and to ensure that they are properly investigated.

- 1.4 If, for any reason, you feel unable to raise your concern through any of the contacts listed above, you can also approach any of the following:
- Chief Executive
 - The Council's internal auditors (these are not council employees but part of a shared service provided by LGSS)
 - Councillors nominated by the Council for this purpose (name and telephone numbers are available on the council's website or from Democratic Services)
 - The External Audit Manager (the external auditor is not a Council employee and is not subject in any way to the Council's control). (Please see the council website for further details)
- 1.5 Finally, the Government has laid down a list of external bodies who you can contact for specific matters. This list can be found at:
<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>
- 1.6 If you are not certain as to the extent of the problem you have identified, you should still report it. What appears, on initial consideration, to be only a minor incident can sometimes turn out to be more serious after investigation.
- 1.7 Please note that you should follow the complaints process if your concern is about a particular service that we have provided you. If you genuinely believe that someone is committing a crime, you should immediately report their suspicions to the Police.
- 1.8 The only circumstance in which someone raising an issue could face criticism or (in the case of employees) disciplinary action is where they have made a malicious or vexatious allegation which they know to be untrue.

2.0 Outcomes

- 2.1 This policy is intended to encourage and enable anyone to raise serious concerns with the council rather than overlooking a problem or seeking to address concerns externally.
- 2.2 It aims to achieve:
- Confident employees
 - Effective management
 - Sound, ethical governance
 - Open communications
- 2.3 The provisions for employees in this policy apply to all East Northamptonshire Council employees and to employees of contractors working for the Council on Council premises or providing council services in the District, for example those managing the Council's Leisure Centres or cleaning the offices, agency staff, consultants and private contractors. The policy is designed to give them protection and confidence in reporting concerns about anything they may witness on Council premises.
- 2.4 Please note that there are already established procedures in place to enable employees to lodge a grievance or raise concerns relating to their own employment or the Council's employment policies and this policy is not intended to cover those matters.
- 2.5 This policy may also be used by people who are not employees, although the legislative provisions in section 10.0 will not apply to them.

3.0 Aims of Policy

- 3.1 We know that we face the risk that something may go wrong or that someone may ignore our policies, our procedures, or the law, resulting in serious consequences.
- 3.2 We want everyone to feel that it is safe and acceptable to tell us about concerns so that we can investigate and take action as soon as possible. Experience shows that if staff, or others who work on behalf of the council, have worries or suspicions, they could, by reporting their concerns at an early stage, help put things right or identify and stop potential wrongdoing
- 3.3 This policy covers major concerns that fall outside the scope of other procedures. This could be about any of the following (but please note that this is not an exhaustive list):
- conduct which is an offence or illegal;
 - miscarriages of justice;
 - health and safety risks, including risks to the public, as well as other employees;
 - damage to the environment;
 - the unauthorised use of public funds;
 - possible fraud and corruption, including benefit fraud;

- sexual or physical abuse of colleagues or clients;
- bullying, intimidation or other unethical conduct

3.4 This policy aims to:

- encourage everyone to feel confident about raising serious concerns and to question and act on concerns about malpractice or bribery
- encourage people to report concerns at the earliest opportunity
- provide reassurance that those who raise a concern will be protected from possible reprisal or victimisation;
- provide reassurance that any matter reported will be taken seriously and treated in confidence as far as practicable;
- provide channels for raising concerns in the workplace and for feeding back on any action taken;
- ensure concerns are dealt with and provide information on how to pursue them further if necessary.

3.5 This policy does not replace the corporate complaints procedure or the procedure for complaints about alleged breaches of the councillors' Code of Conduct. It may, however, start complaints which are better made under either of these procedures. We will advise if this is the case.

3.6 This policy complements the Council's Counter Fraud Strategy **and** our Children and Young People Safeguarding arrangements. It also forms part of this Council's response to the 2010 Bribery Act, under which individuals may be convicted of bribery or the Council may be prosecuted for failing to prevent bribery taking place.

4.0 Safeguards against harassment and victimisation

4.1 The Council is committed to good practice and high standards and wants to be supportive of employees. Councillors and staff recognise that the decision to report something can be difficult to make, for fear of reprisal from those responsible for the matter(s) reported. This policy is aimed to ensure that no-one who reasonably believes that what they're reporting is true should have any reason to fear.

4.2 The Council will not tolerate harassment or victimisation (including informal pressures) and will do all it lawfully can to protect employees or others who raise a concern in good faith. The Council's Bullying and Harassment Policy sets out the steps that we will take to prevent and manage any bullying or harassment in the workplace. (This can be found within the Staff Management Procedure). Victimising employees or others, or deterring them from raising a concern, is a disciplinary offence.

5.0 Confidentiality

5.1 You may feel that the only way you can raise your concerns is if we protect your identity. We will respect your confidentiality as far as we possibly can but there are times when we cannot guarantee this, for example, where a criminal offence is involved or if there are child protection issues.

- 5.2** If we proceed to a formal investigation we may require you to give evidence along with other employees and witnesses; we are, in some circumstances, able to do this without disclosing the identity of the whistleblower. A statement from you may also be required as part of criminal proceedings or an Employment Tribunal – this depends on the nature of the concern.
- 5.3** We will attempt to ensure the whistleblower’s identity is not disclosed to third parties without a court order. If the information you provide includes personal information about another person, then that person may be entitled to access it under the subject access provisions of the Data Protection Act. If releasing that information could reveal details about the whistleblower, we will always ask for your consent prior to releasing the information.
- 5.4** If your whistleblowing disclosure results in an internal investigation and you provide a witness statement under that process, your statement may be used for disciplinary purposes. This means your statement may be given to the subject as part of a disciplinary hearing. An employee subject to the disciplinary process can ask to see personal information held about them at any time under the subject access provisions of the Data Protection Act – this may include information within your statement. If it is possible to provide access to personal information within your statement without revealing any information about you, we will do so. If this is not possible, we will always seek your consent before releasing any information.
- 5.5** If your statement is not required for disciplinary purposes it will be:
- held confidentially on our case file (until the case file is destroyed after 7 years)
 - released only with your consent or a Police/Court order

The Council:

- does not expect you to give us your consent – this is your decision alone – but we are required by law to ask you
- does not need a reason should you choose to refuse the request

6.0 Anonymous Allegations

- 6.1** People making a whistleblowing disclosure are encouraged to put their name to an allegation whenever possible. This is because concerns expressed anonymously are much less powerful; anonymous complaints will be considered as far as possible, at the discretion of the person to whom the complaint is reported.
- 6.2** Factors to be taken into account in responding to anonymous reports include:
- the seriousness of the issues raised;
 - the credibility of the concern; and
 - the likelihood of being able to confirm the allegation from attributable sources.

7.0 How to raise a concern

- 7.1** The earlier you raise your concerns, the easier it is to take action. In the first instance, you should contact either:

- any Head of Service;
- the Council's Monitoring Officer
- the Chief Finance Officer/S151 officer

Or, if for any reason you feel unable to speak to the above please contact:

- The Chief Executive
- The Council's Internal Audit Manager - contact details available from the website or the Customer Services Team)
- Two Council members to be nominated by the Leader of the Council. (These members not to be Leader, Deputy Leader or any Chairman. Members' names to be published on the ENC Hub)

If you do not know how to contact any of the above please look at the Council's website.

7.2 Who you contact in the first instance depends on the seriousness and sensitivity of the issues involved and who you're concerned about. As a general guide you should talk to the person in the list above who manages the highest level person you believe may be involved. If you believe that there are financial implications please talk to the Chief Finance Officer. If you believe councillors are involved then please contact the Monitoring Officer. Finally, if you do not feel it appropriate to speak to any of the above then please refer to Section 9 of this policy.

7.3 It's best if your concerns are put in writing. There is a form you can use if you want to, ([Whistle Blowing - Reporting Form](#)) but a letter or email is okay too. Set out the background and history of what's troubling you, giving names, dates and places where possible, and the reasons why the situation is a particular concern. Alternatively, speak to one of the above in person; they will take your worries seriously, listen to you and give you advice about how to proceed.

7.4 To be covered by whistleblowing law, a person who makes a disclosure must reasonably believe two things. The first is that they are acting in the public interest. This means in particular that personal grievances and complaints are not usually covered by whistleblowing law. The second thing that a person must reasonably believe is that the disclosure tends to show past, present or likely future wrongdoing.

8.0 How the Council will respond

8.1 It's important to remember that investigating your concerns is not the same as either accepting or rejecting the validity of the allegation. Where appropriate, the matters raised might be:

- investigated by a senior manager, internal audit, or through the disciplinary process;
- referred to the Police;
- referred to the external auditor;
- the subject of an independent inquiry; or
- reported to the Council.

8.2 In order to protect you, the Council, and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle the Council will

follow is to establish the facts and to protect employees and the public interest. Concerns or allegations which fall within the scope of specific procedures (for example, discrimination, bullying or harassment issues), will normally be dealt with under those procedures.

- 8.3** Some concerns may be resolved by agreed action without the need for an investigation. If urgent action is required, it will be taken before any investigation is conducted.
- 8.4** Within five working days of raising your concern, the person you contact will write to you to acknowledge that the matter has been received and to let you know how the matter will be dealt with.
- 8.5** The amount of contact between the person making an allegation and the officer(s) considering it depends on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought.
- 8.6** We recognise that you need to be assured that the matter has been properly dealt with and will endeavor to keep you informed on a regular basis as matters progress. We will tell you when the investigation is completed, but you may not necessarily be told the outcome of the investigation; this is because it may involve confidential employment matters or be subject to legal constraints.

9.0 How the matter can be taken further

- 9.1** This policy is intended to provide you with an avenue within the Council to raise concerns. While it is hoped that this policy gives you the reassurance you need to raise such matters internally, it is recognised that there may be circumstances where you can properly report matters to outside bodies, such as the prescribed regulators (who are appointed by the Government as external bodies able to take and consider your concerns). If you feel it is right to take the matter outside the Council, the following are possible contact points:

- The Council's External Audit Manager (Currently Ernst and Young - contact details from the Council's website or contact the Customer Services Centre on 01832 742000)
- Local Government Ombudsman
- Northamptonshire Police
- A prescribed person or body specified by who you can contact for specific matters. This list can be found at: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>

10.0 Provisions and Protections for Employees

- 10.1** Whistleblowing law is contained in the Public Interest Disclosure Act 1998 (PIDA) and the Enterprise and Regulatory Reform Act 2013. Public bodies, such as this Council, are required to have a whistleblowing policy and to ensure that employees are not victimised or dismissed for raising their concerns internally. This also applies to those who, as a last resort, feel the need to take their concerns to an outside body, such as the Local Government Ombudsman. The Acts give legal protection to workers making

disclosures about certain matters of concern, where those disclosures are made in accordance with the Act. The Act is incorporated into the Employment Rights Act 1996, which already protects employees who take action or raise concerns about health and safety at work. This council believes in the highest possible standards of conduct and values openness, honesty, integrity and accountability. However we recognize that employees may be put off expressing concerns for a variety of reasons such as:

- fear of reprisal, harassment or victimisation (eg loss of job)
- too much to lose (reputation, damage to career etc)
- feelings of disloyalty
- worries about who may be involved
- you have no proof, only suspicions – and it is easier to ignore the suspicion.
- fear of repercussions if there is no evidence or you are proved wrong

10.2 However, in line with our Knowledge, Skills and Behaviours Framework, we expect employees who have concerns about any aspect of the Council's work to come forward and voice those concerns. They could relate to:

- activities that are against the provisions of Council's constitution and policies, including the codes of conduct for officers and councillors
- behavior that falls below established standards or practice
- what you think amounts to improper conduct

10.3 The Council will take steps to minimise any difficulties which any employee may experience as a result of raising a concern. For instance:

- the Council will provide legal advice to one of its employees who is asked to give evidence in criminal or disciplinary proceedings at a court or tribunal hearing on the Council's behalf. The advice would cover the preparation of witness statements, on the procedures before the court and the responsibilities as a witness.
- Any employee involved in a whistleblowing allegation will be advised of the Council's free and confidential counselling service – information can be obtained from HR Services.
- When a meeting is arranged, employees can be accompanied by a trade union representative or colleague. Meetings can be held off-site if requested.

10.4 If an employee decides to blow the whistle to a prescribed person, they must make sure that they've chosen the correct person or body for that issue. Public Concern at Work (<http://www.pcaw.co.uk/>) or, if applicable, trade unions, will be able to advise on such an option and on the circumstances in which an employee may be able to contact an outside body safely. We would like to remind employees that they should not report any Council- related issues to the media. To do so may be considered a breach of the Council's Disciplinary Policy.

10.5 These whistleblowing arrangements are not designed to give a further opportunity to pursue a grievance or complaint that has exhausted the relevant employment procedures. Nor will their use necessarily mean that, if an employee is already the subject of disciplinary or redundancy procedures, those procedures will be halted as a result of the whistleblowing.

10.6 If an allegation made under the whistleblowing provisions is not confirmed by an

investigation, no action will be taken against the person who reported it. However, frivolous or malicious allegations, allegations made for personal gain or to cause trouble or annoyance without good reason will be investigated to decide whether disciplinary action is required. In addition, an employee will not be eligible for protection under the provisions in paragraph 10.1.

- 10.7** If an employee finds themselves the subject of a whistleblowing disclosure and a decision is made to investigate, the Council will follow the appropriate employment procedure: equal opportunities, grievance or disciplinary and capability. This means the employee will have all the rights contained in that procedure, such as, the opportunity to respond to the allegation and representation at the investigatory interview.

11.0 The Responsible Officer

- 11.1** The Monitoring Officer is responsible for maintaining and operating the policy. The Monitoring Officer will maintain a record of concerns raised and records of the outcomes in a form which does not prejudice your confidentiality or the confidential nature of any investigation.
- 11.2** Any of the officers or councillors identified in paragraph 8.1 shall, if approached by employees with concerns, advise the Monitoring Officer at the soonest appropriate time to enable the record to be maintained.

12.0 Monitoring and Review

- 12.1** This policy will be reviewed by the Monitoring Officer at least every 3 years to ensure that it is still appropriate and that it continues to provide accurate advice on the reporting options open to employees.

Appendix 1 – Example Whistle Blowing scenarios

Example 1

You are working in a service area which regularly engages outside contractors. You have noticed that one, which is a supplier we often use, doesn't deliver on time or to budget. Your Head of Service, who is very friendly with one of the employees in the contracting firm, doesn't appear to share your concerns, and is quick to make excuses for them. You suspect your Head of Service may be receiving gifts and hospitality from the contractor. What should you do?

Report the suspicion to the Monitoring Officer or to the Chief Finance Officer.

Example 2

You work in the finance team processing monthly accounts and notice that the Executive Director has used a corporate procurement card to purchase new clothing. What would you do?

Report the matter to the Chief Executive or our Internal Audit Manager.

Appendix 2

Action Flowchart - Whistleblowing Policy and Procedure

