

WHISTLEBLOWING POLICY

1. Introduction

- 1.1 'Whistleblowing' is the term used for a public interest disclosure by a worker who suspects a failure or wrongdoing at work, for example, theft from the Council, accepting or offering a bribe or endangering the health and safety of any individual.
- 1.2 The Council is committed to maintaining the highest standards of openness, probity and accountability. In line with that commitment, it expects and encourages all employees to maintain high standards in accordance with the Code of Conduct for Council Employees. This Policy aims to encourage workers with serious concerns about any aspect of the Council's work to come forward and voice those concerns, so that they can be investigated effectively. The Policy applies to all employees working at all levels of the organisation including school staff employed by the Council and also agency workers and contractors. It explains their rights in relation to whistleblowing, making it clear that they can speak up without fear of reprisals, even if they turn out to be mistaken provided that it is reasonable, and provides them with guidance on the procedure for making protected disclosures. The intention of the Policy is to encourage and enable employees to raise certain concerns within the Council rather than overlook a problem or report it externally.
- 1.3 This Policy should be read in conjunction with the following complimentary policies/documents:
 - 1.3.1 The Council's Anti-Fraud and Corruption Strategy
 - 1.3.2 The Code of Conduct for Council Employees
 - 1.3.3 The Council's Fraud and Dishonesty Leaflet
 - 1.3.4 Children and Young People and Vulnerable Adults Safeguarding Procedures
 - 1.3.5 The Council's Anti-Bribery Policy and Procedure.
 - 1.3.6 Personal Harassment Policy and Procedure
- 1.4 The provisions of the Public Interest Disclosure Act 1998 (the PIDA), which amended the Employment Rights Act 1996 (the ERA), protect individuals who make certain disclosures of information and allow them to bring action in respect of victimisation. The Enterprise and Regulatory Reform Act 2013 made further changes to whistleblowing law.

2. Aim of the Policy

2.1 The Policy aims to promote and support the law by:

- giving employees the confidence to come forward with serious concerns;
- providing a way of raising any such concerns and receiving feedback where possible on any action taken
- allowing employees to take the matter further if they are dissatisfied with the Council's response;
- reassuring employees that they will be protected from possible reprisals or victimisation for whistleblowing if they make a disclosure in the public interest;
- protecting health and safety representatives when performing their health and safety functions in accordance with the ERA without suffering a detriment or being unfairly dismissed;
- protecting employees from suffering a detriment where the Health and Safety Officer cannot be reasonably informed of a danger or potential danger to health and safety. Additionally, those employees who reasonably believe there is serious and imminent danger, which they cannot reasonably be expected to prevent, necessitating leaving work or refusing to return because of the danger or, taking appropriate steps to protect themselves or others from the danger, where they have informed the Council of the danger, are also protected.

2.2 This Policy covers concerns that fall outside the scope of other complementary procedures/policies/documents, as detailed in paragraphs 1.3.1 to 1.3.6 inclusive.

2.3 This Policy supplements other existing procedures relating to probity in the course of the Council's business or matters relating to the conduct of employees, including the Code of Conduct for Council Employees, Grievance, Disciplinary, Harassment, and Recruitment and Selection Policies and Procedures.

3. Responsibility

3.1 The Head of Democratic and Partnership Services (the Council's Monitoring Officer) has overall responsibility for the maintenance and operation of this Policy and maintains a record of concerns raised and the outcomes (in a form which does not endanger the whistleblower's confidentiality) and may report, in appropriate circumstances, to the Council's Audit Committee.

3.2 This Policy has been drafted to help the Council and its employees to achieve best practice and the highest standards of openness, probity and accountability as well as adhering to legislation. It has been agreed with the recognised Trade Unions, and the policy is communicated by various means including the Intranet and the Internet.

4. The Whistleblowing Policy

4.1 The legislation protects employees who make qualifying disclosures of certain types of information relating to illegality or danger to health and safety or a deliberate cover-up. Workers can disclose this information to their employer or, in certain limited circumstances to a person other than the employer, without fear of subsequent harassment, victimisation, or other unfair treatment. A disclosure of information qualifies for protection if, in the reasonable belief of the worker making the disclosure, it is made in the public interest.

- 4.2 The ERA protects Health and Safety Representatives who take action in performing their health and safety functions under the Act.

5. Scope of the Policy

- 5.1 The concept of a qualifying disclosure requires a reasonable belief that one of six specified situations has occurred or is likely to occur:-

- a criminal offence;
- a breach of a legal obligation;
- a miscarriage of justice;
- endangering the health and safety of another;
- damage to the environment;
- deliberate concealment of any of the above.

- 5.2 As a consequence of the new “made in the public interest” requirement, this Policy normally should not be used for complaints about an employee’s personal circumstances and if there is a breach of an employee’s contract of employment, this can be raised using the Council’s Grievance Procedure.

- 5.3 This does not stop workers from raising irregularities or malpractice concerns which do not fall under the list of qualifying disclosures under section 5.1, for example, if a worker raises concerns about service provision, unethical conduct or a breach of internal procedures or professional rules that do not have the force of law. However, statutory protection would not apply. If in doubt whether something is within the scope of this Policy, employees should seek advice from an appropriate manager or the Head of Democratic and Partnership Services or via the Council’s Fraud Hotline.

- 5.4 Management should be the first to know of any issues that they may need to address and they may be able to be dealt with internally and quickly. The Policy acts as an early warning system for the Council. This does not preclude employees obtaining their own legal advice. Any contractual duty of confidentiality is void in so far as it purports to preclude the worker from making a protected disclosure.

6. Safeguards against Harassment or Victimisation

- 6.1 It is recognised that the decision to report a concern can be a difficult one to make and a worker who makes a protected disclosure under section 5.1 is protected in law from suffering any detriment by any act or any deliberate failure to act, done by management or another employee on the ground that the worker has made a protected disclosure. The Council is very clear that it will not tolerate any form of harassment, victimisation or mistreatment of whistleblowers.

7. Confidentiality

- 7.1 It is hoped that workers will feel able to voice concerns openly under this policy. If you wish to raise a concern in confidence, every effort will be made to preserve confidentiality unless it becomes legally impossible to do so. The Council will do its best to protect your identity and if it is necessary for anyone investigating to know your identity, this would be discussed with you before deciding how to proceed. The investigation process may reveal the source of the information and at the appropriate time, you may be expected to come forward as a witness.

8. Anonymous allegations

8.1 It will be more difficult, or impossible to investigate if concerns are expressed anonymously. Any such investigation is less likely to be effective, although it may be considered at the discretion of the Council. It is hoped that workers will feel able to come forward and put their name to any allegation and receive the protection of the law. If you feel that you can only raise concerns without saying who you are, you can use the fraud hotline.

8.2 In exercising its discretion, the factors to be taken into account would include:-

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from named individuals or other sources of information.

9. Untrue or Malicious Allegations

9.1 Disclosures no longer have to be made in good faith and if you have a “reasonable belief” in the subject matter of the disclosure, but it is not confirmed by the investigation, no action will be taken against you.

10. How to raise a concern

10.1 As a first step, you should normally raise any concerns with your line manager or, if the complaint is about the manager, another appropriate manager. However, this depends on the seriousness and sensitivity of the issues involved and who is thought to be involved in the failure or malpractice. For example, if you believe that operational managers are involved, in the first instance you should approach your Director, or contact the Assistant Head of Finance in his role as head of Internal Audit, or the Head of Democratic and Partnership Services. You can also use the Fraud Hotline number Tel: 01422 393568, which will be answered by the Council’s Internal Audit section.

10.2 The Head of Democratic and Partnership Services will determine whether the concerns raised should be investigated and, if so, what path the investigation will take. He may decide that the concern should be referred to the Chief Executive, or he may under Financial Procedural Rules need to involve Internal Audit and/or the Head of HR or himself in his role as Monitoring Officer.

10.3 Concerns may be raised in person with line management. However, concerns are better put in writing, particularly where the matter is more serious, or you feel that your manager has not addressed your concern. You should set out the nature of the concern, including the background and relevant names, dates and places where possible. You should have a genuine belief that the information tends to show a relevant failure and a reasonable belief that it is made in the public interest but proving the allegation beyond reasonable doubt is not expected. The earlier a concern is expressed, the easier it may be to take action. Without sufficient detail it may be difficult, or impossible, to investigate the complaint adequately.

10.4 An online form is available on the intranet and on the Council’s website if you wish to use it (see Appendix A). This can also be obtained by e-mailing the Head of Democratic and Partnership Services – ian.hughes@calderdale.gov.uk or the Head of Human Resources. If you do not feel able to put your concern in writing, it is

possible to telephone or meet an officer. By completing this form, all relevant and appropriate details will have been provided.

- 10.5 A worker may wish to involve a Trade Union representative at this stage or other representative or colleague to accompany them during any meetings in connection with the concerns that have been raised. A colleague will be permitted a reasonable amount of time off for this purpose.
- 10.6 Advice and guidance on how matters of concern may be pursued can be obtained confidentially by ringing the Council's Fraud Hotline on Halifax 01422 393568, which will be answered by the Council's Internal Audit Section.
- 10.7 A whistleblower may, however, make a disclosure to a prescribed person, where they have a reasonable belief that the failure or malpractice falls within that person's remit and that the allegations are substantially true. A list of the most relevant prescribed persons is set out at paragraph 13 below. The full list is contained in The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2003 which can be accessed at <http://www.legislation.gov.uk/ukxi/2003/1993/made>
- 10.8 Where a worker discloses an "exceptionally serious failure", to anyone else, it must be in the reasonable belief that the information disclosed and any allegation contained in it, are substantially true and must not act for personal gain and it must be reasonable in all the circumstances of the case to make the disclosure and in particular, to that person.
- 10.9 If a worker fails to comply with the above requirements regarding disclosure, the law will not protect their actions and the Council may consider disciplinary action against them, up to and including gross misconduct.

11. How the Council will respond

- 11.1 The action taken by the Council will depend on the nature of the concern. In order to protect individuals and the Council, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The matters raised may:-
 - be investigated internally by the Head of Democratic and Partnership Services as Monitoring Officer or Internal Audit
 - be referred to HR if there is a need for a disciplinary investigation
 - be referred to the Police
 - be referred to the External Auditor.
- 11.2 This Policy is usually inappropriate for resolving individual grievances and employees are encouraged to use more appropriate internal procedures, such as the Grievance Procedure. If you are uncertain about the procedure, you may need to seek guidance from the Head of Democratic and Partnership Services.
- 11.3 Concerns or allegations that fall within the scope of other specific procedures, for example, child protection, will normally be referred for consideration under those procedures.
- 11.4 Some concerns may be resolved by agreed action without the need for investigation.

11.5 Within ten working days of a concern being received, the Council will write to you:

- acknowledging that the concern has been received,
- indicating if more information is needed in order to investigate the matter,
- indicating how it proposes to deal with the matter,
- giving an estimate of how long it will take to provide a response,
- advising whether further investigations will take place, and if not, why not.

11.6 The amount of contact with the investigator will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, you will be asked for further information.

11.7 A meeting will be arranged as soon as possible with the investigating officer to discuss the concern and you have the right, if you wish, to be accompanied by a Trade Union representative or a colleague of your choice for moral support. A written record will be taken of the key points of concern raised.

11.8 The Council will take steps to minimise any difficulties that you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the Council will provide you with information about the procedure.

11.9 The Council recognises that employees need reassurance that the matter has been taken seriously and properly addressed. Thus, subject to legal and confidentiality constraints, the Council will give you as much as information as it can about the progress of the investigation, likely timescale and any recommendations to minimise the risk of future wrongdoing. Sometimes the need for confidentiality may prevent the Council providing you with specific details of the investigation or any disciplinary action taken as a result. Any information about the investigation should be treated as confidential. A breach of confidentiality of any information you receive will be treated as misconduct, and could be classed as gross misconduct. If you are in any doubt you are advised to contact the Head of Democratic and Partnership Services for advice.

12. Harassment, Victimisation or Bullying

12.1 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 failure or malpractice. The Council will not tolerate harassment or victimisation whether from management or other employees and will take action to protect a worker who raises a concern.

12.2 This does not mean that if an employee is already the subject of Disciplinary, Grievance or Redundancy procedures, those procedures will be halted as a result of their disclosure.

13. Who are the “Prescribed Persons”?

13.1 The aim of this Policy is to provide workers with an internal mechanism to raise concerns within the Council so that they can be investigated and any wrongdoing remedied. The Council hopes employees will have confidence in using the internal procedure and in most cases employees should not find it necessary to alert anyone

externally. If an employee is not satisfied with the outcome of any internal investigation, and reasonably believes that their allegations are substantially true and they consider that it is right in the circumstances to blow the whistle outside the Council, the following are permissible contact points for their areas of regulatory activity:

- Audit Commission - the proper conduct of public business, value for money, fraud and corruption.
- HM Revenue and Customs - income tax, maternity and sick pay, tax credits, child benefits, collection of student loans and the national minimum wage.
- Environment Agency – matters affecting the environment or the management or regulation of the environment, including pollution and flooding.
- Food Standards Agency - matters which may affect the health of any member of public in relation to the consumption of food and any other matters concerning the protection of the interests of consumers in relation to food.
- General Social Care Council - matters relating to the registration of social care workers under the Care Standards Act 2000.
- Care Quality Commission - matters relating to the provision of regulated care services, as defined in the Care Standards Act 2000.
- Health and Safety Executive - matters which may affect the health or safety of any individual at work or member of the public in connection with the activities of persons at work.
- Information Commissioner's Office - compliance with the requirements of legislation relating to data protection, freedom of information and environmental information law.
- Pensions Regulator - matters relating to occupational pension schemes.

13.2 The above list has been extracted from the Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2003, and whilst it is not exhaustive, it does comprise the persons most likely to be of relevance to the work of a Local Authority. The full list can be found at - <http://www.legislation.gov.uk/uksi/2003/1993/made>

Reviewed and updated April 2014

STRICTLY CONFIDENTIAL**APPENDIX A****CALDERDALE MBC****PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING) POLICY**

REPORT FORM	
Name of Employee making report (You are encouraged to insert your name, but may choose not to do so - the recipient of the form will make every effort to maintain confidentiality)	
Directorate or Service where reporting employee works	
Person(s) reported	
Concerns reported (Give full details of the background to the concern; names, dates and places; and the reasons why you are concerned - ATTACH A SEPARATE SHEET IF NECESSARY)	
Date	
Signed (If employee's name appears above)	

Legislative requirements contained within the Public Interest Disclosure Act 1998, and the Employment Rights Act 1996 as amended are embedded within the Council's Whistleblowing Policy (which can be viewed on the Council's Intranet or Internet, or obtained as a hard copy from the Head of Democratic and Partnership Services). This gives the whistleblower protection from reprisals and victimisation provided that the whistleblower has a reasonable belief that the disclosure is made in the public interest and relates to a concern set out in the policy.

The officer receiving this referral will copy the information contained within it, under confidential cover, to the Head of Democratic and Partnership Services who, in his role as the Council's Monitoring Officer, has overall responsibility for the recording, monitoring and oversight of all concerns raised.