

# **WHISTLEBLOWING**

## Policy and Operating Procedures

---

### **1. Why do we need a policy?**

1.1 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we encourage employees with certain concerns about any aspect of the Council's work to come forward and voice those concerns to the Council as set out below. It is recognised that certain cases will have to proceed on a confidential basis. This policy document makes it clear that employees can do so without fear of reprisals. The policy is intended to encourage and enable employees to raise certain concerns within the Council rather than overlooking a problem or reporting it outside. It should be read in conjunction with the following complimentary policies/documents:

1.1.1. The Council's Anti-Fraud and Corruption Strategy (see intranet)

1.1.2. The Code of Conduct for Council Employees (see intranet)

1.1.3 The Council's Fraud and Dishonesty Leaflet (see intranet)

1.1.4 Children and Young People and Vulnerable Adults Safeguarding Procedures.

1.2 The policy will help us to comply with the Public Interest Disclosure Act 1998 (the 1998 Act) and the Employment Rights Act 1996 (the 1996 Act) and set out the procedure for employees to follow to comply with the Act.

### **2. What is our aim?**

2.1 We will protect you from detriment in accordance with the Public Interest Disclosure Act 1998, that is from reprisals or victimisation for "whistleblowing" where the disclosure is made to the Council in good faith and relates to a concern set out in the policy.

2.2 We will also protect Health and Safety Representatives and employees under certain provisions contained in the Employment Rights Act 1996 who take action over or raise concerns with the Council about health and safety at work.

### **3. Who is responsible?**

- 3.1 The Chief Law and Administration Officer, (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 (but in a form which does not endanger your confidentiality) and will report, in appropriate circumstances, to the Council's Standards Committee.

### **4. How will we implement this?**

We have drafted this policy to help the Council and its employees comply with the legislation. We have discussed and agreed this policy with Unison, and the policy will be published on the Intranet.

### **5. The Whistleblowing Policy**

#### **5.1 What are the aims of the 1996 and 1998 Acts?**

- 5.1.1 To protect employees who make certain disclosures (whistleblow) to the Council or in some limited circumstances outside the Council under the 1998 Act.
- 5.1.2 To protect Health and Safety Representatives who take action in performing their health and safety functions under the 1996 Act.
- 5.1.3 To protect an employee who has reported a danger to health or safety, to the Council, where it was not reasonably practicable to raise the matter with the Health and Safety Representative, and subsequently takes certain actions under the 1996 Act.

#### **5.2 When can an employee whistleblow under the 1998 Act?**

- 5.2.1 Whistleblowing disclosures are protected when they relate to any action of the Council or an employee that:
- Is a criminal offence;
  - Relates to a failure to comply with a legal obligation;
  - Is about a miscarriage of justice;
  - Is about endangering the health and safety of another;
  - Is about damage to the environment; or
  - Indicates that there is or is likely to be concealment of any of the matters set out above
- 5.2.2 This does not stop you from raising other issues of concern with your Manager, but you must not voice them outside the Council; this does not stop you obtaining your own legal advice.
- 5.2.3 Employees who whistleblow will be protected by the Council and confidentiality will be maintained.

### **5.3 When can an employee take action under the 1996 Act?**

5.3.1 A Health and Safety Representative can act in performing his/her health and safety functions without suffering a detriment or being unfairly dismissed.

5.3.2 Employees are protected from suffering a detriment or being unfairly dismissed where the Health and Safety Representative cannot reasonably be informed of a danger or potential danger to health or 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.

### **6. What are the aims and scope of this Policy?**

6.1 To encourage and provide avenues for you to raise concerns with the Council and receive feedback on any action taken.

6.2 To allow you to take the matters further if you are dissatisfied with the Council's response.

6.3 To reassure you that you will be protected from reprisals or victimisation for whistleblowing in accordance with the 1998 Act where the disclosure is made to the Council in good faith and relates to a concern listed in paragraph 5.2 above.

6.4 To reassure you that you will be protected for acting in accordance with the 1996 Act as set out in paragraph 5.3 above.

6.5 This policy covers concerns that fall outside the scope of other complementary policies/documents as detailed in paragraphs 1.1.1 to 1.1.4 inclusive.

6.6 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 Grievance, Disciplinary, Harassment, and Recruitment and Selection Policies and Procedures.

### **7. How to raise your concern**

7.1 Concerns are better raised in writing. You will be requested to set out the background and history of the concern, giving names, dates and places where possible, and the reason why you are particularly concerned about the situation.

7.2 A form is available if you wish to use it (see Appendix A). This is available on the intranet or can be obtained by contacting your Directorate Personnel team. If you do not feel able to put your concern in writing, you can telephone or meet an officer as detailed at paragraph 8.1 below. By using the form this will ensure that you include all relevant and appropriate details.

7.3 The earlier you express the concern, the easier it is to take action. You may also wish to involve your Trade Union representative at this stage.

- 7.4 Although you are not expected to prove the truth of an allegation, you will need to demonstrate to the person contacted that there are sufficient grounds for your concern.
- 7.5 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.
- 7.6 Your Trade Union representative or a colleague may accompany you when you meet an officer as detailed at paragraph 8.1 below. A colleague will be permitted a reasonable amount of time off for this purpose.

## **8. With whom should you raise your concern?**

- 8.1 As a first step, you should raise concerns in good faith within the Council, normally with your immediate manager or, if the complaint is about your manager, his/her superior, or your Group Director if you feel that is more appropriate.

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, you should approach your Group Director in the first instance, who may, under Financial Procedure Rules need to involve Internal Audit, or if this is inappropriate the Chief Law and Administration Officer in his/her role as Monitoring Officer.

- 8.2 The Chief Law and Administration Officer will refer your concern to the Chief Executive if he/she considers it is necessary to do so.
- 8.3 You may however make a disclosure to a prescribed person, in good faith where you reasonably believe that the failure or malpractice falls within that person's remit and that your allegations are substantially true. A list of the most relevant prescribed persons is set out at paragraph 14 below. The full list is contained in The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2003 SI No 1993, which can be read at [www.hmso.gov.uk](http://www.hmso.gov.uk).
- 8.4 If you make a whistleblowing disclosure to anyone else (for example to the Press) you must make it for all the following reasons:
- In good faith,
  - In the reasonable belief that the information disclosed and any allegation contained in it are substantially true,
  - Not for personal gain,
  - In the reasonable belief that the Council may subject you to a detriment or will conceal or destroy the evidence,

### And

In all the circumstances of the case it is reasonable to make the disclosure.

- 8.5 The above is an exceptionally high standard to meet and employees are advised not to follow this course of action because the courts will have regard to:
- (a) the reasonableness of the disclosure to this person
  - (b) the seriousness of the failure
  - (c) whether there is a breach of confidentiality; and
  - (d) whether you have followed the whistleblowing procedure set out in this policy.
- 8.6 Where you disclose an exceptionally serious failure to anyone else it may not be reasonable depending on the identity of the person to whom it is made. You must make it for all the following reasons:
- In good faith,
  - In the reasonable belief that the information disclosed and any allegation contained in it are substantially true,
  - Not for personal gain,
  - The relevant failure is of an exceptionally serious nature,
- And
- In all the circumstances of the case it is reasonable to make the disclosure.
- 8.7 If you fail to comply with the above requirements regarding disclosure the law will not protect your actions and the Council may consider disciplinary action against you including gross misconduct.

## **SAFEGUARDS**

### **9. Harassment or Victimisation**

- 9.1 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 and will take action to protect you when you raise a concern in good faith.
- 9.2 However, this does not mean that if you are already the subject of Disciplinary, Grievance or Redundancy procedures, those procedures will be halted as a result of your disclosure.

## **10. Confidentiality**

The Council will do its best to protect your identity when you raise a concern and do not want your name to be disclosed. The investigation process may, however, reveal the source of the information and a statement by you may be required as part of the evidence.

## **11. Anonymous Allegations**

11.1 This policy strongly encourages you to put your name to your allegation. Concerns expressed anonymously are much less powerful and less likely to be effective, although they may be considered at the discretion of the Council.

11.2 In exercising this 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.

## **12. Untrue or Malicious Allegations**

12.1 If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. However, malicious or vexatious allegations may lead to disciplinary action including proceedings for gross misconduct.

## **13. How will the Council respond?**

13.1 The action taken by the Council will depend on the nature of the concern. The matters raised may be subject to:

- internal investigation,
- referral to the Police,
- referral to the External Auditor,
- referral to the Monitoring Officer for consideration on whether any matter should be considered by the Standards Board for England or the Standards Committee,
- consideration under the Disciplinary Procedure if the matters relate to an employee(s).

13.2 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. 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.

- 13.3 Some concerns may be resolved by agreed action without the need for investigation.
- 13.4 Within ten working days of a concern being received, the Council will write to you:
- Acknowledging that the concern has been received,
  - Indicating how it proposes to deal with the matter,
  - Giving an estimate of how long it will take to provide a response,
  - Telling you whether an initial enquiry has been made,
  - Telling you whether further investigations will take place, and if not, why not.
- 13.5 The amount of contact between the officer considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, we will seek further information from you.
- 13.6 When any meeting is arranged with the investigating officer you have the right if you so wish to be accompanied by a Trade Union representative or a colleague of your choice.
- 13.7 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 advise you about the procedure
- 13.8 The Council accepts that you need to be assured that the matter has been properly addressed. Thus, subject to legal and confidentiality constraints, you will receive information about the outcomes of any investigations.

#### **14. Who are the “Prescribed Persons”?**

- 14.1 This policy is intended to provide you with an avenue to raise concerns within the Council. The Council hopes you will be satisfied with the internal procedure. If you are not and your allegations are substantially true and you feel it is right in good faith to take the matter 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.
  - Inland Revenue - 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.

- 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.
- National Care Standards 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 - compliance with the requirements of legislation relating to data protection and freedom of information.
- Occupational Pensions Authority - matters relating to occupational pension schemes.

14.2 This is not the exhaustive list, this can be read at [www.hmso.gov.uk](http://www.hmso.gov.uk) - The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2003 Statutory Instrument 2003 No. 1993, but it comprises the persons most likely to be of relevance to the work of a Local Authority.

Dated April 2006

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

<b>REPORT FORM</b>	
<b>Name of Employee making report</b> (You are encouraged to insert your name, but may choose not to - the recipient of the Form will attempt to preserve confidentiality)	
<b>Directorate or Service where reporting employee works</b>	
<b>Person(s) reported</b>	
<b>Concerns reported</b> (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)	
<b>Date</b>	
<b>Signed</b> (If employees' name appears above)	

Legislative requirements contained within the Public Interest Disclosure Act 1998, and the Employment Rights Act 1996 are embedded within the Council's Whistleblowing Policy (which can be viewed on the Council's Intranet, or obtained as a hard copy from the Chief Law and Administration Officer). This gives the Whistleblower protection from reprisals and victimisation provided that the disclosure is made in good faith and relates to a concern set out in the policy.

**The information contained in this form will be copied by the Appropriate Officer receiving this referral, under confidential cover, to the Chief Law and Administration Officer in her role as the Council's Monitoring Officer. This will facilitate independent recording, monitoring and oversight of all concerns raised.**