

## CHERWELL DISTRICT COUNCIL AND SOUTH NORTHAMPTONSHIRE COUNCIL

### WHISTLEBLOWING POLICY

It is important to know the difference between a 'Whistle blow' and a 'grievance.' A Whistle blow has a public interest aspect to it, as it puts at risk others. A grievance by contrast has no public interest factors, as it is a complaint about a particular employment situation. A grievance should be reported using the Grievance policy, not this policy. For example, a member of staff being formally interviewed on capability grounds, without previously having had any indication that their performance was not acceptable, may lead to a grievance complaint being made. Whilst a member of staff who observes colleagues sharing/selling confidential data that they have access to, to un-authorised others, should lead to a Whistle Blow.

#### 1 Introduction

- 1.1 Employees are often the first to realise that there may be something seriously wrong within a local authority. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances employees may feel that it is easier to ignore the concern, rather than report what may just be a suspicion of malpractice.
- 1.2 Both Councils' are committed to the highest possible standards of openness, probity and accountability. In line with that commitment both Councils' encourage employees and others with serious concerns about any aspect of either Council's work to come forward and voice those concerns. It is recognised that certain cases will have to proceed on a confidential basis.
- 1.3 Whistle blowing is the term used when someone who works in or for an organisation raises a concern about a possible fraud, crime, danger or other serious risk that could threaten customers, colleagues, the public or the organization's own reputation. For example instances of theft from the Council, accepting or offering a bribe, and failure by colleagues to adhere to Health & Safety directives could all be the subject of a Whistle blow.
- 1.4 Whilst there is no statutory requirement for the Council to have a Whistle blowing policy, the Government expects public bodies to have a policy in place and the Whistle blowing policies and procedures in local authorities are assessed regularly as part of their external audit and review. The Council is committed to the highest possible standards of openness, probity and accountability, and so has developed and endorsed this policy. In line with that commitment it expects and encourages employees, and others that it deals with, who have serious concerns about any aspect of the Council's work to come forward and voice those concerns. It is recognised that most cases will have to proceed on a confidential basis.
- 1.5 This policy document makes it clear that concerns can be raised without fear of victimisation, subsequent discrimination or disadvantage. This Whistle blowing policy is intended to encourage and enable employees to raise concerns within either Council in person, rather than overlooking a problem or using other methods to report concerns.
- 1.6 This policy applies to all employees, including casual and agency staff. Similar policies apply to suppliers and those contracted to provide services to either Council or on either Council's

behalf.

- 1.7 The Public Interest Disclosure Act 1998 protects Council employees who report concerns from subsequent harassment, victimisation and other unfair treatment. Potential informants should feel reassured that it is illegal for either Council to consider any action against them should their concerns not prove to be verifiable.
- 1.8 Finally, and importantly, regulators and the courts are increasingly looking at the adequacy of Whistle blowing arrangements to determine whether an offence has been committed by an organization under regulatory or criminal laws, for example banks manipulating the libor rate or cases of corporate manslaughter where Health & Safety procedures have not been followed. The effectiveness of the arrangements is a factor that the courts and regulators consider when determining the level of any fine or penalty.

## **2 Aims And Scope Of This Policy**

2.1 This policy aims to:-

- encourage employees to feel confident in raising serious concerns that they may have about practices and procedures
- provide avenues to raise those concerns and receive feedback on any action taken
- allow employees to take the matter further if they are dissatisfied with the Council's response
- reassure employees that they will be protected from possible reprisals or victimisation if they have made any disclosure in good faith

2.2 Areas covered by the Whistle Blowing Policy include:-

- criminal or other misconduct
- breaches of the Council's Standing Orders or Financial Regulations
- contravention of the Council's accepted standards, policies or procedures
- disclosures relating to miscarriages of justice
- health and safety risks
- damage to the environment
- unauthorised use of public funds
- fraud, bribery and corruption
- sexual, physical and/or verbal abuse of any person or group
- other unethical conduct
- the concealment of any of the above

2.3 Any concerns about any aspect of service provision or the conduct of officers of either Council, or others acting on behalf of either Council, can be reported under the Whistle blowing policy

2.4 Management should be the first to know of any issues that they may need to address. These may be able to be dealt with internally. This means that the costs of investigating any concerns, such as fraud, are reduced as problems can be caught quickly. The time and resources saved mean that a Whistle blowing policy can act as a cost-effective early warning system for the Council.

### **3 Safeguards Against Harassment Or Victimisation**

- 3.1 Both Councils' 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. However, neither Council will tolerate any form of harassment or victimisation, and will take appropriate action to protect employees who raise a concern in good faith.
- 3.2 Both Council's have policies on Personal Harassment & Bullying at Work, which are designed to protect employees from all forms of harassment in the workplace.
- 3.3 Both Council's are committed to good practice and high standards and endeavours to be supportive of its employees.
- 3.4 In all cases, the provisions of The Public Interest Disclosure Act (PIDA) will be adhered to.
- 3.5 The Enterprise & Regulatory Reform Act (ERRA) received Royal Assent on 25/04/13, and introduces a Public Interest test requirement on Whistleblowers. In order to receive the protection of PIDA, whistleblowers will now have to show that they reasonably believed that the disclosure they are making is in the Public Interest. The ERRA comes into force on 25/06/13 and affects disclosures made after that date onwards. Further information on the ERRA can be found at [www.legislation.gov.uk](http://www.legislation.gov.uk)

### **4 Confidentiality**

- 4.1 All concerns will be treated in confidence and the identity of the employee raising the concern will not be revealed without his or her consent (subject to any legal requirements or decisions). At the appropriate time, however, the employee may be expected to come forward as a witness.

### **5 Anonymous Allegations**

- 5.1 Employees' concerns expressed anonymously, for example via the **Fraud Hotline** or by letter, are likely to be difficult to deal with effectively. Consequently, employees are encouraged to put their name to any allegation and receive the protection of PIDA. However both Councils recognise that on occasion employees might feel that they could only come forward anonymously and the fraud hotline acts as an appropriate avenue for such situations.
- 5.2 Any action taken in response to an anonymous allegation will be influenced by factors including the seriousness of the issues raised and the likelihood of confirming the allegation from reliable sources.

### **6 Untrue Allegations & Legal Protection**

- 6.1 If an allegation is made in good faith, but it is not confirmed by the investigation, no action will be taken against the employee making the allegation. If, however, an allegation is made that is fictitious, malicious or for personal gain, action may be taken against the employee in accordance with either Council's Disciplinary Procedure.
- 6.2 As an employee of either Council you are also given legal protection by the Public Interest Disclosure Act 1998. If you make what is known as a "qualifying disclosure" under the 1998 Act to your employer or certain other persons/bodies, and you act reasonably and in good

faith, it will be unlawful for either Council to subject you to any detriment (such as denial of promotion or withdrawal of a training opportunity), or to dismiss you, because of the disclosure.

- 6.3 Compensation may be awarded to you by an Employment Tribunal if either Council breaches the 1998 Act, following a successful claim for 'detrimental treatment'.

## **7 How To Raise A Concern**

7.1 Employees should normally raise concerns in the first instance with their Line Manager. Alternatively, dependent upon the nature, seriousness and sensitivity of the issues involved and the person suspected of malpractice, the matter may be raised with the Senior Management Team, Senior Corporate Fraud Investigator, Internal Audit or the External Auditor.

7.2 Concerns may be raised verbally or in writing. Employees who wish to raise a concern should provide details of the nature of the concern or allegation and its background, including relevant dates. The detail should be sufficient to demonstrate reasonable grounds for concern, although proof beyond doubt of an allegation is not expected at this stage. The earlier a concern is expressed, the easier it is to take action.

7.3 Employees may be represented and/or accompanied by a trade union, professional association, other representative or a friend throughout the process and during any meetings or interviews in connection with the concerns that have been raised.

7.4 Employees who would like to obtain free advice about the concern they have should contact the National Audit Office who deals with fraud and corruption in Local Government, as well as general conduct concerns. They can be telephoned on 020 7798 7999 or written to at The Controller and Auditor General, National Audit Office, 157-197 Buckingham Palace Road, London, SW1W 9SP. There is also guidance on their website (<http://www.nao.org.uk/contact-us/whistleblowing-disclosures/>). In addition, the Directgov website ([www.direct.gov.uk](http://www.direct.gov.uk)) offers useful information and guidance on Whistle blowing.

## **8 How The Councils Will Respond**

8.1 Matters raised under this policy should be investigated by the Investigation Manager (IM), unless they are involved in the allegation, in which case, an external investigator will look into the matter. When conducting the investigation the IM may involve:-

- the Corporate Fraud Investigation team
- Internal Audit
- Legal & Democratic Services
- Human Resources
- the Police
- an external auditor
- an independent inquiry

Alternatively, a disciplinary investigation may be the more appropriate course of action to take, in which case, the IM will advise Human Resources. In addition

- 8.2 In order to protect individuals and those accused of misconduct or malpractice, the IM will make initial enquiries to decide whether an investigation is appropriate and, if so, what form it should take, having regard to the law and the public interest.
- 8.3 Some concerns may be resolved by agreed action without the need for investigation. It may be necessary to take urgent action before any investigation is completed.
- 8.4 The Officer with whom the concern has been raised under paragraph 7.1 will respond in writing within ten working days
- acknowledging that the concern has been received
  - indicating how it is proposed to deal with the matter
  - giving an estimate of how long it will take to provide final feedback
  - stating whether any initial enquiries have been made
  - supplying information on what staff support is available , and
  - stating whether further investigations will take place and if not, why not.
- 8.5 Both Councils will take steps to minimise any difficulties that the employee may experience as a result of raising a concern. For instance, if he or she is required to give evidence in criminal or disciplinary proceedings either Council will arrange for advice to be given about the procedure (but not about what answers to give).
- 8.6 Both Councils accept that employees need to be assured that the matter has been properly addressed. Subject to legal constraints, either Council will inform the employee of the progress and outcome of any investigation.
- 8.7 It is important for employees to understand that making a whistle blowing allegation doesn't give them anonymity, but does give them protection from harassment or victimisation.

## **9 The Responsible Officer**

- 9.1 The Chief Executive has overall responsibility for the maintenance and operation of this policy, and will maintain a record of concerns raised and the outcomes. This record will be in a form which does not compromise confidentiality. The Chief Executive will report as necessary to both Councils.

## **10 How The Matter Can Be Taken Further**

- 10.1 This policy is intended to provide a process within Cherwell District and South Northamptonshire Councils, through which employees may raise concerns. If at the conclusion of this process the employee is not satisfied with any action taken or feels that the action taken is inappropriate, the following are suggested as further referral points:
- the external auditor
  - a trade union
  - a relevant professional body or regulatory organisation
  - the police
  - organisations prescribed from time to time by the Secretary of State for the purpose of protected disclosure under the Public Interest Disclosure Act.

Referral of any matter outside either Council must not compromise confidentiality. Employees should check this with the organisation being sent the referral.

## **11 Associated Documents**

11.1 The following is a list of documents that are closely associated with the Whistle Blowing Policy. The documents are referred to or complement this strategy and are reviewed on a rolling basis.

- Anti Money-Laundering Policy
- Anti-Fraud, Corruption and Bribery Strategy
- Code of Conduct for Officers
- Disciplinary Procedures
- Constitution
- Financial Procedure Rules
- Annual Governance Statement
- Risk Management Policy
- Internal Audit Strategy