

## WHISTLEBLOWING PROCEDURE

This Procedure should be read together with the Council's Whistleblowing Policy.

### 1. Principles

- 1.1 The law protects employees who seek to uphold the public interest by flagging issues of concern within the Council.
- 1.2 The Council treats all reports it receives seriously. We encourage individuals to feel confident in raising any genuine concerns.
- 1.3 This Procedure explains:
  - how employees, elected Councillors and those working with the Council should report any concerns; and
  - how line managers and the Council will deal with whistleblowing reports.

#### What is Whistleblowing?

- 1.4 Whistleblowing is the raising of a significant concern. The concern does not have to be proved accurate by the whistleblower, but must be genuinely suspected.
- 1.5 Significant concerns may cover many issues. Examples may include (**NB** this is not an exhaustive list):
  - A criminal offence may have been, or seems likely to be, committed;
  - Breach or disregard for legislation, particularly relating to health & safety;
  - Suspected fraud;
  - Malpractice or ill treatment of a client/customer;
  - Breach of Standing Orders, Policies or Codes of Conduct;
  - Showing undue favour over a contractual matter or to a job applicant;
  - Concealing information on any of the above.
- 1.6 In all cases, whistleblowers should make a report if they think it would be in the **public interest** for the conduct to be corrected and (if appropriate) sanctions applied.

## **The basic structure of reporting**

- 1.7 The Council has appointed three Whistleblowing Reporting Officers (**WROs**), who are the Monitoring Officer, Deputy Chief Executive and the Interim Assistant Director, Corporate Services. The WROs' role is:
- To be the primary point of liaison for whistleblowers;
  - To triage whistleblowing reports (i.e. whether the complaint is more properly a grievance/other issue);
  - To determine how whistleblowing reports should be addressed – whether via internal or external investigation and whether preliminary fact-finding is required; and
  - To allocate responsibility for the conduct of investigations and ensure that these investigations are concluded.
- 1.8 As set out below, there are a range of available ways for you to report concerns either in person or in writing.
- 1.9 The Monitoring Officer has overall responsibility for the Whistleblowing Policy and this Procedure, and will liaise with members of the Senior Management Team as necessary.

## **2. What you should do as a Whistleblower**

- 2.1 As soon as you reasonably believe you have a serious concern, **you should** report it using one of the following methods:
- To your line manager directly, either in writing or verbally;
  - To a WRO directly, either in writing or verbally;
  - Via the form on our website; or
  - Via email to [whistle@west-norfolk.gov.uk](mailto:whistle@west-norfolk.gov.uk).

Both the email address and online form submissions are monitored by the WROs.

If you feel that none of these routes are appropriate, see paragraphs 2.7-2.15 below.

- 2.2 If possible, please raise your concerns in writing, to ensure those conducting investigations properly understand and investigate the allegations. Written allegations should as far as possible include the background, history and nature of the concern (including names, dates and locations if known) and the reason why you are concerned about the situation.
- 2.3 If it is not possible to provide a written summary above, you can raise your concern either by telephone or by meeting the appropriate officer as set out in Section 1.7.

2.4 You should make clear at the outset whether you would prefer your identity to be kept confidential. See the ***“Confidentiality of your identity”*** section of this procedure.

2.5 Where you have a genuine concern, you should **not**:

- Do nothing;
- Be afraid to raise the concerns – you will not suffer any recriminations from the Council as a result of raising a legitimate concern;
- Directly approach or accuse individuals you have concerns about;
- Try to investigate the matter yourself. There are special rules surrounding the gathering of evidence for use in criminal cases. Any attempt to gather evidence by anyone not familiar with these rules could destroy the case;
- Convey your concerns to anyone not in the list above (there is a duty to maintain the confidentiality of the matter under investigation).
  - **NB** an employee may invite a trade union representative or work colleague to report the matter on their behalf.
  - **Members** may wish to consult their party Leader before raising the matter, but again should do so in general terms so as to maintain the confidentiality of the matter under investigation.

2.6 The earlier a concern is raised, the easier it is for the Council to take action.

### ***Reports concerning Senior Staff***

2.7 Any concerns which relate to the **Chief Executive** should be raised with the Leader of the Council (or if unavailable, the Deputy Leader).

2.8 Any concerns which relate to a **WRO** may either be raised with the other WROs, or with the Chief Executive.

### ***Whistleblowing outside the Council – “Prescribed Persons”***

2.9 The Policy and this procedure are intended to provide an avenue to raise concerns within the Council. However, if you feel that this is not appropriate, there is a list of **“Prescribed Persons”** who may accept a whistleblowing report. These are mainly regulatory bodies, for example the Care Quality Commission, OFSTED, Health and Safety Executive, Charity Commission, but also include the Council’s external auditors, Ernst & Young.

The current list of Prescribed Persons can be found on the gov.uk website (search under “whistleblowing”).

2.10 If you choose to take this route, we strongly advise that a disclosure should only be made if it is reasonably believed that the information provided is “substantially true” – this means that more evidence will need to be provided to back up the

case than for an internal disclosure. If there is any doubt about which route to take, it is recommended that the Prescribed Person be contacted first for advice (without initially naming the employer or providing specific details) or speak to a professional Trade Union Association.

### ***Whistleblowing outside the Council – Other External Agencies***

- 2.11 There may be circumstances in which an external disclosure could be made to another person or organisation, for example the Police, a union official, an MP or the media. It will rarely be appropriate to alert the media in the first instance.
- 2.12 The law is complex for this type of disclosure. In order for a report to be a “protected disclosure”, the following conditions **must all** be met:
- The individual reasonably believes that the allegation is substantially true;
  - The disclosure is not being made for purposes of personal gain; AND
  - It is reasonable (see below) in the circumstances for the disclosure to be made to someone other than the Council or a prescribed person.

In addition, **one** of the following three conditions **must also** apply:

- There is a reasonable belief of victimisation if the matter is raised internally;
  - There is a reasonable belief that there is likely to be a cover-up if the matter is raised internally; or
  - The matter has already been raised internally or with a Prescribed Person
- 2.13 What makes an external disclosure “reasonable” includes things like the seriousness of the allegation, the likelihood of the risk or damage continuing in the future and the action taken by the Council or a Prescribed Person if they have already disclosed the matter to them. If a disclosure has already been made to the Council or a Prescribed Person, any action already taken should be known before considering taking the matter further.
- 2.14 We strongly encourage you to seek advice before reporting a concern to anyone external.
- 2.15 Disclosure will not be protected if an offence has been committed in making it.

## **3. Line Managers’ role**

- 3.1 Line Managers must create an open and fair culture within their area of responsibility and ensure that employee concerns are listened to, and action taken where necessary. They are responsible for ensuring that there is a safe environment for employees to raise concerns and that there is no retribution as a result of doing so.

3.2 Many reports from staff will be matters which are appropriate to resolve within the team. However, **you must escalate the report** where it appears to concern, or may concern:

- Any criminal offence, particularly fraud or corruption
- a miscarriage of justice
- A failure to comply with a legal obligation
- The endangering of an individual's health and safety
- Unnecessary damage to the environment (for example, by pollution)
- Deliberate concealment of information relating to any of the above

3.3 Reports must be escalated in writing.

3.4 You **must not**:

- Approach or accuse any individuals directly.
- Escalate to anyone other than those indicated in section 2 above.
- Try to investigate the matter yourself. Investigations by employees who are unfamiliar with the requirements of evidence are highly likely to jeopardise a successful outcome. They may also alert the suspect and result in the destruction of evidence.

## 4. Role of Whistleblowing Reporting Officers

4.1 The WRO's shall:

- If the whistleblower is an employee, reassure them that they will not suffer recrimination by raising reasonably held suspicions.
- Take early action if they consider this is necessary (subject to the rest of this procedure). Delay may cause the Council to suffer further financial loss or make further enquiry more difficult.
- Get as much information as possible from the whistleblower and encourage them to provide a written statement and/or copies of any notes they have already taken.
- Request documentary evidence which may exist to support the allegations made, but do not interfere with this evidence in any way.
- Ask the whistleblower to declare any personal interest in the concern raised.
- Produce a written record of the whistleblower's concerns, which should include:

- Details of the job and areas of responsibility of the individuals implicated;
- Background details and nature of the concerns (including relevant names, dates and locations);
- Why the person raising the matter is concerned; and
- Action taken to date, if any.
- Carry out an Initial Review (see below), in which they shall:
  - Determine what if any further steps shall be taken.
  - Be objective when evaluating the issue, and consider the facts as they appear based on information to hand.
  - Take care to ensure that any suspect(s) are not alerted to the potential investigation, and the confidentiality of the whistleblower is maintained as far as possible.
- Oversee the steps to be taken following the Initial Review; and
- Provide information to the whistleblower as appropriate during and at the conclusion of any further steps.

## **5. Initial Review**

- 5.1 As soon as possible after a concern is reported, the WRO's shall carry out an initial review of the whistleblowing report and decide together on the appropriate action, depending on the nature and the facts of the report. The WRO's may where appropriate discuss the matter with other officers.
- 5.2 The WROs shall consider whether any urgent action is required to protect the interests of the Council or the public.
- 5.3 The Initial Review may conclude that the report should be:
- Resolved by agreed action (e.g. training or review) without the need for investigation;
  - Referred for handling under another policy;
  - Investigated internally;
  - Referred to the police or another external investigating agency; or
  - Referred to the external auditor.

- 5.4 Within ten working days of the concern being raised, the WRO's shall inform the whistleblower in writing of the outcome of the Initial Review:
- To the extent appropriate, the whistleblower shall be given details of any further investigation.
  - The individual will also be told if the Council wishes to contact them again to obtain further information.
- 5.5 If the Council does want to speak to the individual again, it will look to minimise any difficulties that may arise. The individual will be given the opportunity to meet off-site and to be accompanied by a trade union or professional representative. The Council will also ensure that the individual receives appropriate support and guidance if they agree to give evidence in criminal or disciplinary proceedings.

## **6. Investigation**

- 6.1 Any investigation will be mindful that, in order to initiate disciplinary/criminal proceedings against suspected financial misconduct, evidence must be secured in a legally admissible form.
- 6.2 The information provided in some whistleblowing reports may indicate the need for the Council to investigate other related matters of concern. For example, an allegation that a client in a residential home has been the victim of theft may suggest wider safeguarding issues. Any investigation into these other matters will be carried out separately in accordance with the relevant policy or procedure. In these cases, no action will be taken that compromises the confidentiality of the original whistleblower.
- 6.3 If an investigation is required, and unless it is inappropriate to do so, the WRO's will write to the whistleblower:
- Giving an estimate of how long it will take; and
  - Advising them that the investigation will be carried out in the strictest confidence.
- 6.4 The WRO's will consider in each case whether the circumstances make it more appropriate for an external rather than internal investigation to be conducted. It is not realistic to fix the criteria for this decision; however, in broad terms, matters which seriously implicate senior management or which involve significant Council business are more likely to be referred to external investigation.

### ***Internal Investigation***

- 6.5 The WRO's shall discuss and appoint a lead officer for each Investigation (whether internal or external). This will normally be the Assistant Director of the department involved. However, it may be appropriate to appoint as lead officer either:

6.5.1 the AD of another department, in the interests of independence; or

6.5.2 a more junior officer under delegated authority.

- 6.6 The internal investigation may include interviewing or observing suspects in connection with the concerns raised. This is to ensure that evidence is collected in a way that complies with relevant legislation and does not compromise the investigation and/or subsequent disciplinary procedures/prosecutions.
- 6.7 The WRO's will consider whether an initial covert investigation might be appropriate required, for example:
- To minimize the risk that evidence is hidden or removed; or
  - To avoid wrongly damaging the reputation of anyone suspected but subsequently found innocent of wrongful conduct.

### ***External Investigation***

- 6.8 The WRO's shall appoint a lead officer within the Council with responsibility for managing the external investigation.
- 6.9 The WRO's shall also notify the Chief Executive of the referral to external investigation, who may also brief members as appropriate taking into account the nature of the investigation.

## **7. Final Report**

- 7.1 Once the process of Initial Review and Investigation (if any) is complete, and subject to any legal or other constraints that may arise, the Council will provide the individual with a summary of the outcome. Whistleblowers should be aware that in most cases it will not be appropriate to provide a detailed explanation.
- 7.2 Where the matter relates to fraud, an internal report shall be produced setting out a description of the systems, controls and procedures that should be operating within the area where the fraud is alleged to be taking place. The external auditor shall also be made aware of the matter.

## **8. Your Safeguards as a Whistleblower**

### ***"Protected Disclosures"***

- 8.1 Employment law (the Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998) provides protection for an employee against harm or damage caused to them as a result of reporting a concern to their employer. This is known as making a "protected disclosure". For example, it is unfair for an employer to dismiss you or select you for redundancy on the grounds that you have made a protected disclosure.
- 8.2 Under the legislation, a disclosure is protected if the person making it has a reasonable belief that it is in the public interest to do so (known as the "public interest test").



- 8.3 It is important to note that this protection only applies to the areas and situations set out in this procedure. If there is any uncertainty whether the matter is covered, independent advice can be sought. Key contacts have been included in the Whistleblowing Policy.

### ***Harassment and Victimisation***

- 8.4 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 malpractice. The Council will not tolerate harassment or victimisation (including informal pressures) and will take action to protect employees when they raise a concern in good faith. The Council will treat any claims of harassment or victimisation seriously and will investigate the complaint in accordance with the Council's Harassment Procedure at Work, which could lead to disciplinary proceedings.
- 8.5 This does not mean that if, where an employee is already the subject of disciplinary or redundancy procedures, those procedures will be halted as a result of their whistleblowing.

### ***Confidentiality of your identity***

- 8.6 Recognising that individuals may have personal concerns about coming forward as whistleblowers, the Council will make every effort to protect whistleblowers' identities when they ask for their name not to be disclosed. However, the fact that enquiries are being made could result in the identity becoming suspected or known. As a result, the Council cannot guarantee in all cases that complete confidentiality can be maintained.
- 8.7 Where information needs to be shared with officers to progress an investigation, then again, the Council will seek to protect the whistleblower's confidentiality to the extent possible.
- 8.8 If your identity may be compromised through investigation, or if it may become necessary to disclose it (for example, in the course of evidence in court), the Council will attempt to contact you in advance to discuss how you want to proceed. It will also try to make suitable protective arrangements as appropriate and feasible (for example changing line management structures).
- 8.9 In particular, it may be necessary to breach confidentiality **without** any prior consultation where the allegation is so serious that the Council has to take immediate action to prevent anyone coming to any harm, and where it is necessary to reveal the nature and source of the complaint. These will be extreme and unusual cases, however, and the Council will endeavour to notify you in advance even in these cases.

### ***How the Council handles Anonymous Allegations***

- 8.10 We encourage whistleblowers to put their name to their allegation whenever possible. Concerns expressed anonymously will be considered by the Council, but they are much less powerful and the Council will exercise discretion as to whether to further investigate them, taking into account:
- the seriousness of the issues raised;
  - the credibility of the concern; and
  - the likelihood of being able to independently confirm the allegation.

### ***Withdrawing your allegation***

- 8.11 You have the right to withdraw any allegation previously made under this procedure. Depending on circumstances, the Council may request an explanation for this change of decision.
- 8.12 As set out above, however, the Council may continue to investigate the allegation notwithstanding your withdrawal, if it determines that serious issues are raised.

### ***Disclosure of Confidential Information***

- 8.13 Individuals can make a protected disclosure using information that the employer classes as confidential. It is important to note, however, that the procedures in this Policy should be followed to avoid the risk of disciplinary action.
- 8.14 If a disclosure includes information that a third party has provided to the Council in confidence, that disclosure may not be protected to the extent that it causes the third-party unjustifiable damage or breaches their rights.

### ***Untrue Allegations***

- 8.15 Whistleblowers are not expected to prove the truth of an allegation, and if an employee or Member makes an allegation in good faith, but it is not confirmed by the investigation, the Council will not take action against them.
- 8.16 However, if an allegation is found to be malicious, frivolous or vexatious, or intended to give personal gain to the whistleblower as a result of the allegation, disciplinary action may be taken against them. If such an allegation is made by a Member, the Standards Committee may investigate the matter.

## **9. Management of the Whistleblowing process**

- 9.1 The current detailed arrangements are set out at Appendix 1 to this procedure.

## **Appendix 1 – Reporting Arrangements**

For the purposes of reporting, there shall be the following arrangements:

- i. There will be a dedicated whistleblowing page on the Council's public-facing website, in which the Whistleblowing Policy is set out in user-friendly terms.
- ii. The Whistleblowing page will contain an online Whistleblowing Form, in which the individual can enter:
  - their name and contact details (or refuse if wishing to be anonymous),
  - details of any representative,
  - details of the concern,
  - request for anonymity/confidentiality,
  - an upload facility to submit photos/documents.
- iii. The whistleblowing form and the policy will signpost that the report can instead be directed to the WRO's directly, or to others where a WRO is implicated.
- iv. In addition, there will be a dedicated mailbox, [whistle@west-norfolk.gov.uk](mailto:whistle@west-norfolk.gov.uk). Forms completed via the online page will be forwarded to this mailbox.
- v. A member of the Legal team will be assigned the following functions:
  - circulating reports/emails received to all three WRO's;
  - informing the whistleblower that their email has been received;
  - giving a reference code to each report which can be used for future emails and matter tracking.
  - maintaining a database containing all emails and documents relating to all whistleblowing reports.
  - Monitoring to ensure that reports are progressed and concluded promptly, following up regularly with WRO's or assigned officers.