

Item: 5

Human Resources Sub-committee: 7 November 2019.

Whistleblowing Policy and Procedure.

Report by Executive Director of Corporate Services.

1. Purpose of Report

To consider a revised Whistleblowing Policy and Procedure.

2. Recommendations

It is recommended:

2.1.

That the revised Whistleblowing Policy and Procedure, attached as Appendix 1 to this report, be approved.

3. Background

3.1.

The Council's current Whistleblowing Policy and Procedure was approved by Council, following consideration by the Policy and Resources Committee on 24 November 2015 and is intended to be reviewed every 3 years.

3.2.

The Whistleblowing Policy and Procedure is intended to build upon the rights, requirements and protections for employees contained within the Public Interest Disclosure Act 1998, the Employment Rights Act 1996 and the Enterprise and Regulatory Reform Act 2013 in providing a clear route for employees or workers to raise serious concerns appropriately.

3.3.

It is intended that this policy and the act of whistleblowing based on reasonable belief and the public interest is seen as a positive action which can provide valuable information to the Council and helps to ensure it meets appropriate standards of governance and accountability.

4. Review of the Policy

4.1.

The underlying principles and objectives of the policy, attached as Appendix 1 to this report, are not altering as a result of this review, as they are still largely defined by the Public Interest Disclosure Act 1998, further informed by the Audit Scotland best practice guidance on whistleblowing, and other relevant legislation such as the Bribery Act 2010 and the Enterprise and Regulatory Reform Act 2013.

4.2.

Since the policy was last reviewed and approved in December 2015, there have been no concerns raised under the Policy. Therefore there are no practical examples or learning to consider in the review.

4.3.

The review has underlined that the Council's policy remains sound, accurate, and in accordance with the Council's requirements, and the only proposed change is minor in nature.

4.4.

The change proposed is that, in paragraph 3.3, the Convener should be removed as one of the appropriate persons to whom a concern about or involving the Chief Executive can be reported to, and replaced by the Chief Internal Auditor. This is because involvement of the Convener is contradictory to the general principle that whistleblowing concerns are not raised with or via Elected Members, as outlined in paragraph 3.4 of the Policy.

4.5.

In addition to this change, it is proposed that posters be placed in Council establishments and facilities to raise awareness of the Policy, and the revised Policy and form for submitting concerns be made available on the Council's website.

5. Human Resources Implications

In line with other revised or new Policies and Procedures which are applicable or available to staff, once approved a briefing note will be prepared and issued to provide an overview of the changes and raise awareness.

6. Corporate Governance

This report relates to the Council complying with governance and its duties as an employer and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

7. Financial Implications

7.1.

There are no immediate financial implications arising from this report.

7.2.

Effective whistleblowing arrangements can save the Council money in the long term by minimising the risk of loss through a fraud being perpetrated against the Council and / or legal action being raised against the Council.

8. Legal Aspects

Legislation provides for personal liability for whistleblowing detriments and corresponding vicarious liability of employers for the actions of their staff. As an employer, the Council can avoid vicarious liability by taking all reasonable steps to prevent its employees subjecting others to unlawful detriment for making protected disclosures. Such reasonable steps include having a robust Whistleblowing Policy and Procedure in place and providing guidance to staff on their obligations and best practice.

9. Contact Officers

Gillian Morrison, Executive Director of Corporate Services, extension 2103, Email gillian.morrison@orkney.gov.uk.

Andrew Groundwater, Head of HR and Performance, extension 2253, Email andrew.groundwater@orkney.gov.uk.

10. Appendix

Appendix 1: Whistleblowing Policy and Procedure.



Whistleblowing Policy and Procedure

October 2019

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1. Introduction

1.1. Employees and those people who work closely with the Council are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to the Council or to their colleagues. They may fear harassment or that their job may be at risk. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

1.2. The Council is committed to openness, probity and accountability. It expects employees and others with serious concerns about any aspect of the Council's work to come forward and voice those concerns. The Council's employees and those who work closely for the Council, such as agency staff and key contractors, (hereafter called "workers") and as defined in the Public Interest Disclosure Act 1998, have mutual responsibilities of fidelity, support, confidence and trust. This policy lets employees / workers raise serious concerns within the Council rather than overlooking or ignoring a problem, or immediately "blowing the whistle" to the media or other external bodies.

1.3. This Policy is intended to build upon the rights / requirements and protections for employees contained within the Public Interest Disclosure Act 1998, the Employment Rights Act 1996 and the Enterprise and Regulatory Reform Act 2013, and to which reference will be made in the publication of this policy. It does not remove any rights or protection provided by the Acts.

1.4. It is intended that this policy and the act of whistleblowing based on reasonable belief and the public interest is seen as a positive action which can provide valuable information to the Council and helps to ensure it meets appropriate standards of governance and accountability.

2. Aims and scope of the Policy

2.1. This policy aims to:

- Provide ways for employees / workers to raise concerns and receive feedback.
- Inform employees / workers on how to take the matter further if they are dissatisfied with the response.
- Reassure employees / workers that they will be protected from detrimental treatment for "whistleblowing" in good faith and in the public interest.

2.2. This policy covers any concerns of employees / workers as to malpractice or wrongdoing. A concern of malpractice or wrongdoing may be if:

- A criminal offence has been committed, is being committed or is likely to be committed and which may involve reference to the Police.
- There has been a failure or there is likely to be a failure to comply with any legal obligation, and / or
 - A miscarriage of justice has occurred or is likely to occur.
 - Health or safety of any individual has been or is likely to be endangered.

- The environment is being or is likely to be damaged.
- Information on any of the above is being or is likely to be deliberately concealed.

Examples of Malpractice or Wrongdoing:

- Fraud.
- Wilful breaches of the Council's ~~Standing Orders~~ Scheme of Delegation to Officers, Financial Regulations or Contract Standing Orders.
- Corruption.
- Offering / promising / giving of a bribe or agreeing to / receiving / accepting a bribe in contravention of the Bribery Act 2010.
- Dishonesty.
- Acting contrary to the Council's Code of Conduct for Employees.
- Criminal activities.
- Creating or ignoring risks to health, safety or the environment.

Please note: The above list of examples is not intended to be exhaustive and there may be other examples of malpractice or wrongdoing which it would be appropriate to consider under this policy.

2.3. Other Procedures.

The Whistleblowing policy is specifically for those types of incidents detailed above. There are other procedures for workplace complaints that members of the public and [/ or](#) employees may have about the Council which include:

- The Complaints Procedure which is available to employees as members of the public if in that capacity they have a complaint about service delivery.
- The Dignity at Work Policy if an employee considers that they, or someone else, is being bullied, harassed or discriminated against at work.
- The Grievance Procedure for general work or contractual issues, e.g. dissatisfaction with a decision of a manager, or application of terms and conditions.
- The Corporate Anti-Fraud Policy and Fraud Response Plan for any incidents whereby fraud, or suspected fraud, has occurred.

3. How to raise a concern

3.1. For relatively minor issues employees / workers should normally raise concerns with their line manager or, failing whom, another senior manager. Section 4 details how the concern will be dealt with.

3.2. In general, the whistleblowing procedure is expected to be used for more serious and sensitive issues or exceptionally serious issues (e.g. corruption, fraud, bribery, unlawful acts) and the first step will be to raise the concern with the Chief Internal Auditor who will then raise the matter with the relevant Executive Director (unless he / she, or senior management collectively, is the subject of the complaint in

which case the Chief Executive should be informed, or failing that the Council's Monitoring Officer, who is the Head of Legal Services).

3.3. The [Chief Internal Auditor/Convener](#), the Executive Director of Corporate Services or the Council's Monitoring Officer are appropriate persons to receive complaints under this Policy either against or which involve the Chief Executive. Where the concern is about the Internal Audit section the Council's Monitoring Officer should receive the complaint.

3.4. Whistleblowing procedures do not include raising the matter with Elected Members or the Media. This procedure provides employees with appropriate routes for raising a whistleblowing concern in which employees can have trust and faith that their concerns will be handled with care and due diligence. Raising such concerns with Elected Members or the media is a potential breach of the Employee Code of Conduct and therefore may result in disciplinary action if proven.

3.5. Whenever any matter arises which involves, or is thought to involve, irregularities concerning finance, assets or property in the exercise of the function of the Authority, the Chief Internal Auditor will immediately notify the Head of Finance / Section 95 Officer.

3.6. This Policy does not preclude disclosure to prescribed regulators or bodies or persons for example Health and Safety Executive and the Scottish Environment Protection Agency, or the Local Government Ombudsman in appropriate cases.

3.7. It is preferable if concerns are raised in writing and a standard form, appended to this policy, is available for use. The background and history of the concern, giving names, dates and places where possible, should be set out and the reason why the individual is particularly concerned about the situation. Those who do not feel able to put their concern in writing can telephone or meet the appropriate officer. The earlier the concern is expressed, the easier it is to take action.

3.8. Although employees / workers are not expected to prove the truth of an allegation, they will need to demonstrate to the person contacted that there are sufficient grounds for concern, i.e. they have an honest and reliable suspicion or belief that malpractice or wrongdoing has happened, is happening, or is likely to happen.

3.9. Employees should not attempt to investigate the matter themselves. This policy and procedure provides an appropriate means to raise whistleblowing concerns and is intended to protect all parties involved in such a process.

3.10. An individual may invite his/her trade union representative or another work colleague to raise a matter on their behalf, again preferably in writing.

4. How the concern will be dealt with

4.1. The action taken by the Council will depend on the nature of the concern. There will be a range of possible actions, including:

- Having the concern investigated internally.

- Referring the concern to Internal Audit.
- Referring the concern to the Head of Finance / Section 95 Officer.
- Referring the concern to the Police (where there is potential or suspicion that a criminal act may have been ~~been~~ undertaken).
- Referring the concern to the External Auditor.
- Placing the concern as the subject of an independent inquiry.

4.2. Initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations which fall within the scope of other, existing, procedures (e.g. child protection or dignity at work issues) will normally be referred for consideration under those other procedures in consultation with the appropriate officers. Some concerns may be resolved by agreed action with the complainant without the need for investigation.

4.3. Within 14 calendar days of a concern being received, the Chief Internal Auditor will write to the employee/worker (at his / her home address) who raised the issue:

- Acknowledging that the concern has been received.
- Indicating how the matter is to be dealt with.
- Giving an estimate of how long it will take to provide a final response.
- Saying whether any initial enquiries have been made.
- Indicating whether further investigations will take place, and if not, why not.

4.4. The amount of contact between the body or person considering the issues and the individual raising the concern, will depend 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 from the individual.

4.5. When any meeting is arranged the employee will have the right, if they so wish, to be accompanied by a trade union representative or a work colleague.

4.6. The Council accepts that employees need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, they will receive information about the outcomes of any investigations.

5. Alternative methods of taking forward a complaint

5.1. This policy is intended to provide employees / workers with a way to raise concerns about the Council, within the Council. Concerns should always be raised within the Council in the first instance. The Council hopes this will satisfy employees / workers. However if the individual feels it is right to take the matter outside this process, they have the right to raise a relevant concern with one of the prescribed persons listed in the Schedule to The Public Interest Disclosure (Prescribed Persons) Order 2014. This Schedule includes:

- The Council's External Auditor.
- Relevant professional bodies or regulatory organisations.
- The Health and Safety Executive.

- The Police.
- Audit Scotland.
- Commissioner for Local Government Administration (The Ombudsman).

Employees / workers can also contact the Scottish Government Helpline for the NHS and Social Care where relevant – Telephone 0800724725.

5.2. If employees / workers do take the matter outside the Council, they need to ensure that in making a disclosure, they do not commit an offence under law. The Secretary of State may prescribe bodies e.g. Audit Scotland, or persons to receive disclosures of concerns of malpractice or wrongdoing. Such a disclosure will be protected provided it is made with a reasonable belief that the disclosure is in the public interest, that the relevant failure falls within any matter in respect of which that body has been prescribed and that the information disclosed is substantially true.

5.3. Disclosures in other cases may be protected if made in the public interest with reasonable belief in its truth, not made for personal gain, and if the employee / worker believed he / she would be subject to detriment for disclosure; or believed that the evidence would be destroyed or he / she had made a disclosure of substantially the same information to the employer or prescribed Person; or that they have already made a disclosure and it has not been addressed.

5.4. Exceptionally serious malpractice may mean bypassing other means of disclosure if in all the circumstances it is reasonable to make the disclosure in the public interest, for no personal gain, in the belief that the substance/allegations are substantially true.

6. Safeguards and protection

6.1. Detrimental Treatment

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 e.g. by colleagues, managers or other workers under the Council's control and will take action to protect employees / workers when they raise a concern that is in the public interest; either during its investigation; and / or subsequent to the investigation.

If an employee/worker is already the subject of disciplinary or redundancy procedures or is using the grievance, or Dignity at Work, or similar internal process, then those procedures will not necessarily be halted as a result of the "whistleblowing".

6.2. Confidentiality

The Council will do its best to protect an individual's identity when he / she raises a concern and does not want their name to be disclosed. It must be appreciated however, that the investigation process may reveal the source of the information and a statement by the individual is likely to be required as part of the evidence. In such circumstances, it is unlikely to be possible to maintain absolute confidentiality on the source or identity of the concerned person.

6.3. Anonymous Allegations

This policy encourages employees / workers to put their names to allegations. Concerns expressed anonymously are much less powerful, and whether they will be followed up is at the discretion of the Council, represented by the officer who has received the allegation (namely the Chief Internal Auditor) in consultation with the Monitoring Officer and any other relevant senior officers. In exercising this discretion the factors to be taken into account will include:

- The seriousness of the issue raised.
- Whether the allegation / expression of concern is worthy of belief.
- The likelihood of confirming the allegation from attributable sources.

6.4. Allegations which cannot be confirmed or are untrue

If employees / workers make an allegation in good faith and in the public interest, but it is not confirmed by the investigation, the matter will end there. If, however, it is found that an individual has made malicious or vexatious allegations, disciplinary action may be considered and implemented.

7. Contractors

7.1. Key contractors will be informed of this policy and will be encouraged to use it.

8. The Responsible Officer

8.1. The Chief Executive has overall responsibility for the maintenance and operation of this policy and Internal Audit will maintain a record of concerns raised and the outcomes (but in a form which does not endanger confidentiality) and will report as necessary to the Council through the Monitoring and Audit Committee.

9. Other sources of help and information

9.1. Further information on whistleblowing and the Public Interest Disclosure Act can be found at the following useful contacts:

Public Concern at Work, Third Floor, Bank Chambers, 6-10 Borough High Street,
London SE1 9QQ

Telephone: 02031172520.

Email: whistle@pcaw.org.uk.

www.pcaw.org.uk.

Audit Scotland, 110 George Street, Edinburgh EH2 4LH.

Telephone: 08451461010.

Email: info@audit-scotland.gov.uk.

www.audit-scotland.gov.uk.

10. Review

This policy will be subject to review on a 3 yearly basis, or sooner should there be any relevant legislative changes, to ensure continued relevance and consistency in application.

11. Document Control Sheet

Review / approval history.

Date.	Name.	Position.	Version Approved.
8 December 2015.	General Meeting of the Council.	n/a.	Version 1.0.
TBC	General Meeting of the Council.	n/a.	Version 1.1.

Change Record Table.

Date.	Author.	Version.	Status.	Reason.
August 2019.	Andrew Groundwater.	1.1.	Final.	Reviewed and updated earlier version with minor changes.