

ABERDEEN CITY COUNCIL

COMMITTEE	Finance, Policy and Resources
DATE	5 December 2013
DIRECTOR	Angela Scott
TITLE OF REPORT	Whistleblowing Policy/procedure
REPORT NUMBER:	CG/13/126

1. PURPOSE OF REPORT

This report proposes the introduction of an amended Whistleblowing policy/procedure to replace the existing one, to take account of recent legislative changes regarding whistleblowing as well as other necessary updates.

2. RECOMMENDATION(S)

The Committee is requested to:

- a) Approve the introduction of the amended Whistleblowing policy/ procedure.

3. FINANCIAL IMPLICATIONS

There are no costs associated with the implementation of this amended policy/procedure.

4. OTHER IMPLICATIONS

The incorporation of the changes to the policy/procedure to take account of the recent changes in legislation will help ensure that the Council is legally compliant in relation to its process for dealing with whistleblowing complaints.

5. BACKGROUND/MAIN ISSUES

Changes to the law on whistleblowing came into effect on 25 June 2013 with the introduction of the Enterprise and Regulatory Reform Act 2013.

The changes are:

- A whistleblowing disclosure will not be protected under the legislation unless the worker has “a reasonable belief that it is in the public interest”. Previously they did not have to hold this belief. The disclosure does not have to actually be in the public interest, the worker simply needs to reasonably believe that this is the case.

- A whistleblowing disclosure will no longer have to be made in “good faith”. However, if a disclosure is made in bad faith then compensation following an Employment Tribunal proceeding can be reduced by up to 25%. Previously this legal requirement had caused Tribunals to examine the worker’s motives when claiming protection under whistleblowing laws to ensure there were no ulterior motives for their claim.
- Employers will be vicariously liable for the actions of workers who subject a colleague to any kind of detriment because they have blown the whistle, unless they can demonstrate they took all reasonable steps to prevent this happening. Workers can also be personally liable if they subject a colleague to a detriment in relation to a whistleblowing complaint.
- There has been an extension of the meaning of ‘worker’ for whistleblowing claims to include various NHS workers who had previously been excluded from the legislation.

Therefore, the Council’s Whistleblowing policy/procedure, which was last reviewed in 2010, required to be updated to take account of these legislative changes as well as incorporating other necessary amendments.

The amendments to the policy/procedure have included the following:-

1. The criteria in the policy of when a complaint is covered by whistleblowing protection have been amended with the addition that the person making the disclosure must have a ‘reasonable belief it is in the public interest’ and the deletion that it has to be made ‘in good faith’. Also deleted is the criterion that it must be made ‘without acting for personal gain’ which is linked to the ‘in good faith’ criterion and hence no longer applicable.
2. The list in the policy of who it applies to has been widened to include agency staff, which were previously omitted although had been covered by the legislation.
3. Some other necessary updating of terminology, minor wording changes and updating of the list of external prescribed regulators in appendix 5 have also been made.

Note: the policy already contained a paragraph on protecting an individual who makes a whistleblowing disclosure from any form of bullying, harassment or victimisation, including mention of disciplinary action being taken against a perpetrator, following investigation. This should help demonstrate that reasonable steps are being taken by the Council as an employer to protect employees and workers from any kind of detriment because they have whistleblown.

6. IMPACT

The changes to the policy/procedure are minor and therefore should not have any significant impact on employees or workers of the Council. An Equality and Human Rights Impact Assessment has been undertaken in respect of the amended policy/procedure.

7. BACKGROUND PAPERS

None.

8. REPORT AUTHOR DETAILS

Keith Tennant, Team Leader, Policy and Performance

E-mail ktennant@aberdeencity.gov.uk

Tel: (01224) 523094



ABERDEEN CITY COUNCIL

Whistleblowing

POLICY & PROCEDURE

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SECTION 1: INTRODUCTION

Policy statement

This policy applies to all employees and workers, including agency staff, workers who are self-employed, sub-contractors and workers employed by an outsourced contractor providing Council services. The policy allows individuals to voice their concerns in relation to information they believe shows serious malpractice or wrongdoing within Aberdeen City Council. It allows for this information to be disclosed internally without fear of reprisal and independently of their line management if appropriate. The Public Interest Disclosure Act 1998 (as amended by the Enterprise and Regulatory Reform Act 2013) gives legal protection to individuals against being dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns. These provisions ensure that no-one should be disadvantaged in raising legitimate concerns.

This policy should be used to assist individuals who have serious concerns, or believe they have discovered malpractice or impropriety. It is intended to encourage and enable individuals to raise serious concerns within the Council rather than overlooking the issue or raising them outside the Council. It should not, however, be used to reconsider matters which have already been addressed by other policies e.g. Managing Bullying and Harassment, Managing Discipline, Managing Grievances.

SECTION 2: PRINCIPLES

Principles

This policy is intended to cover concerns which are in the public interest and may, at least initially, be investigated separately but then may lead to other procedures being invoked e.g. Managing Discipline. To be protected as a whistleblower the person raising the concern needs to make a qualifying disclosure about malpractice where one or more of the following has been, is being or is likely to be committed:

1. a criminal offence;
2. a failure or likely failure to comply with any legal obligation;
3. a miscarriage of justice;
4. putting health and safety of any individual in danger;
5. damage to the environment; or
6. deliberate concealment relating to any of the above.

There are some disclosures that can't be qualifying disclosures. The individual won't be protected for whistleblowing if:

- The law is broken when making a disclosure

- The information is protected under legal professional privilege (e.g. if the information was disclosed for the purpose of obtaining legal advice).

The policy aims to encourage individuals to feel confident in raising serious concerns and to question and act on any concerns they may have about malpractice. The policy provides a means for individuals to raise concerns and to receive feedback on any action taken. This policy is designed to offer protection to anyone who discloses reasonably and responsibly any concerns as above, provided the disclosure is made –

- With a reasonable belief it is in the public interest;
- With a reasonable belief that the act has taken place and it is disclosed to an appropriate person;
- With compliance to the provisions of the procedure.

All complaints will be treated in confidence, however, individuals may be called as a witness at a later stage.

If an individual becomes aware of a whistleblowing issue, they should be encouraged to “blow the whistle” as –

- An opportunity could be missed to deal with a problem before it becomes a major issue;
- The individual raising the concern could qualify for protection under the Public Interest Disclosure Act;
- An individual who conceals malpractice could become questionable themselves;
- The Council’s reputation could be damaged.

SECTION 3: THE PROCEDURE

The Council’s procedure comprises **three** formal steps:

Step 1: Invoking the Formal Procedure

Step 2: The Formal Investigation

Step 3: Outcome of the Concern

Reporting a Concern

Before the formal part of the Whistleblowing procedure is invoked there are steps to be undertaken informally which include: the reporting of the concern, and the determination of the complaint.

Individuals have a right and a duty to raise any concerns which they may have regarding the services provided by the Council or any serious malpractice associated with them.

Initially concerns should be reported to line management or, in the case of the self-employed and contractors, the appropriate officer managing the contractual arrangements. Advice and support can be taken from a trade union or work colleague. If this is not appropriate or would be difficult then the individual should seek to contact their Service Manager or Head of Service. If this is not appropriate the formal part of the procedure can be invoked and they may contact the Monitoring Officer (currently the Head of Legal and Democratic Services).

Once the initial report has been lodged and it has been confirmed that it will be dealt with under this policy, all appropriate protection will apply from this point.

Wherever possible, individuals should raise concerns in writing which identify the nature of the concern and the grounds on which these are based. Information on the background, history, names, dates and places should be provided if possible. If individuals do not feel able to raise concerns in writing they may telephone the appropriate officer or arrange to meet the officer face to face.

Determination of the Complaint

When a complaint is received by management, they should first consider whether the matter could be dealt with informally, if it is a minor issue, or whether another policy or procedure is more applicable, before deciding whether to refer the matter to the Monitoring Officer as a whistleblowing complaint. See Appendix 2 for further information.

Once the manager has confirmed that they believe the complaint is a whistleblowing complaint, they should inform the Council's Monitoring Officer by completing the pro-forma (Appendix 3). It is recommended this should take no longer than **5 working days**. (It should be noted that the Monitoring Officer has the final determination on whether the complaint is indeed a whistleblowing complaint).

The manager should also write to the individual to inform them that their concern has been acknowledged, and how it will be dealt with. (See Appendix 4 for Model Letter). Where the manager feels that the matter should be dealt with under another policy, the appropriate route should be progressed to take the matter forward.

Step 1: Invoking the Formal Procedure

On receiving the pro-forma, the Monitoring Officer will check whether it relates to the acts or issues which qualify for protection. The Monitoring Officer will

write to the individual to acknowledge their concern and confirm whether protection under the procedure applies. It is the responsibility of the Monitoring Officer to:

- (1) Make the determination as to whether the concern qualifies for protection within the policy. It is recommended that this should take no longer than **5 working days**.
- (2) Appoint an appropriate Investigating Officer to look into the concern raised, with a view to reporting back within a reasonable timescale. It is recommended that this should take place no more than **5 working days** after it is determined that the Whistleblowing policy applies.
- (3) Confirm with the individual the initial determination relating to the concern and the name of the Investigating Officer.

Step 2: The Formal Investigation

The Monitoring Officer shall appoint a suitable Investigating Officer who has the necessary skills and knowledge to investigate the registered concern and also to determine whether it is appropriate to be investigated within or outwith the Service involved.

Where the concern relates to an issue of financial irregularity, the matter will be dealt with in accordance with financial regulations. However, in these circumstances, communication should be maintained with the Monitoring Officer to allow a response to be made to the individual raising the concern, in accordance with this procedure.

It will be necessary for the Investigating Officer to source and scrutinise all available facts in order to report to the Monitoring Officer. This may include interviewing others who may, or may not, be employees of Aberdeen City Council. It is recommended that investigation is completed within the target date of **20 working days** or to an agreed timescale.

The Investigating Officer should maintain regular contact with the individual who has raised the concern to update them on progress of the investigation.

The Investigating Officer is responsible for compiling a written report for the Monitoring Officer. The report should comment on the validity of the concern and recommend any action the Council should take to make good any identified failings. However, the final decision as to the scope of the investigation and the outcome of the concern is that of the Monitoring Officer alone.

Reporting to external bodies

If there is evidence of criminal activity, the Investigating Officer should inform the police. Any internal investigation should not interfere with any police investigation.

Step 3: Outcome of the concern

Once the Monitoring Officer is in receipt of the Investigating Officer's report, a meeting will be called with the individual who raised the concern. At the meeting the Monitoring Officer will explain the outcome and explain reasons for the decision. This decision will be confirmed in writing within **5 working days** from the date of the meeting.

In most circumstances, the Monitoring Officer should release the full report to the individual who has raised the concern. However, where there are issues which are confidential, which contain personal information about individuals or, for any other justifiable reason, only the parts of the report which exclude the sensitive information will be released.

At the meeting the individual may be accompanied by a work colleague or trade union representative.

Following the outcome, the Monitoring Officer will write to the relevant Head of Service to communicate any action points arising from the whistleblowing concern. These must be implemented within the timescales set by the Monitoring Officer. Any non-compliance with the requirements of the Monitoring Officer will then be reported to the Chief Executive and, should the matter remain unresolved within an eight week period, the Monitoring Officer will report the matter to the next available meeting of the full Council. The Monitoring Officer is also responsible for reporting the number, and progress, of all whistleblowing concerns to each meeting of the appropriate Committee.

Should the individual who raised the concern be dissatisfied with the determination of the Monitoring Officer in the conclusions and action to be taken, they should contact Public Concern at Work, an independent external organisation that can advise on progressing whistleblowing issues.

Where an individual is not satisfied that this procedure has been applied properly or appropriately, they have the right to appeal via the Council's Managing Grievance policy. Any procedural issue raised regarding a whistleblowing concern shall be considered at the formal stage of the Grievance Procedure by a senior manager with no previous involvement in the case. This should be done within **10 working days** of receipt of the outcome letter.

In the case where individuals are not employees of the Council, this must be made via the Council's Complaints Procedure.

SECTION 4: KEY ISSUES TO CONSIDER

Victimisation

The Council will protect any individual who makes a disclosure in accordance with this policy and procedure from any form of victimisation and reprisal. Disciplinary action will be taken against any employee who engages in any

form of bullying, harassment or victimisation against an individual who has raised a concern.

There may be some circumstances where management agree it is appropriate to transfer an employee to another service. This would be done in consultation with the employee concerned.

Anonymous Allegations

This policy encourages individuals who raise concerns not to remain anonymous by ensuring they will be protected from victimisation. However, where an individual wishes to remain anonymous, the Council will attempt to protect their identity. This may not always be possible as individuals who report concerns may be required to give evidence as a witness. The Council will use its discretion in maintaining the anonymity of the individual concerned. The following factors would need to be taken into account –

- the seriousness of the issue(s) raised;
- the likelihood of obtaining information from alternative sources which would confirm the allegation.

Untrue Allegations

The Council will protect individuals from false and malicious allegations. Allegations will be investigated before determining what action, if any, should be taken. Where it is established that an employee makes an allegation which is known to be false or malicious, they will be subject to disciplinary action under the Managing Discipline policy.

SECTION 5: REVIEW OF THE POLICY AND PROCEDURE

This policy and procedure will be reviewed every five years. It will, nevertheless, be subject to continual review and amendment in the light of experience of its operation, employment best practice and statutory requirements. Changes will only be put into effect following the normal consultation arrangements.

Appendix 1: Examples of Whistleblowing

Below are example scenarios of the types of issues that may be covered under the Whistleblowing policy.

Example 1

An individual reports that serious health and safety rules are being breached by others in order to cut down on time spent at jobs. The manager rejects the allegation and subsequently reprimands the individual.

Example 2

An individual raises a concern because Council Officials are receiving gifts and hospitality in exchange for their issue being given priority over others.

Example 3

An individual discloses that a manager is putting pressure on their team by instructing them to continually work 60 hours per week to cover for shortfalls in staff. In doing so they are in breach of the Working Time Regulations.

Example 4

An individual has raised a concern because a manager employs a group of waiting staff to cover busy periods. This group of staff does not have the legal right to work in the UK and no recruitment checks have been carried out.

Example 5

An individual has raised a concern because an employee has been disposing of toxic chemicals inappropriately causing potential contamination to the public water supply.

Example 6

An individual has raised a concern that a manager has been hiring an external trainer who is a friend of theirs, instead of using the internal training team to deliver in-house training, which is on suspicious terms. The manager has been booking more courses than are required and paying the trainer full fees for courses which are subsequently cancelled.

Example 7

An individual has raised a concern regarding the inappropriate storage of meat potentially causing cross contamination. Meat deliveries are constantly left unrefrigerated and on the floor and frozen produce left to defrost before being returned to the freezer.

Example 8

An individual is aware that clients' personal files and data have been disposed of inappropriately and in breach of the Data Protection Act.

Appendix 2: Consideration of other Policies

The Whistleblowing procedure is intended to cover major concerns that fall outwith the scope of other policies or procedures and is intended to have a wider application covering other forms of malpractice. As malpractice is not easily defined, the following is a list of examples – although this list is not exhaustive.

- Fraud
- Financial irregularities
- Corruption
- Bribery
- Dishonesty
- Acting contrary to code of ethics
- Criminal activities
- Creating or ignoring a serious health and safety risk or risk to the environment.

It should be noted that whistleblowing disclosures are protected where they concern –

- An action or omission that took place in the past;
- Improper conduct occurring in the present; or
- The prospect or likelihood of an action or omission occurring in the future.

Difference between a Grievance and Whistleblowing concern

It should be recognised that there is a difference between a grievance and a whistleblowing concern. A whistleblowing concern is regarding the conduct of another individual in the workplace which the complainant genuinely believes falls within the whistleblowing criteria. Whistleblowing is where a concern is raised in relation to danger or illegality which affects others e.g. customers, the public or an employer. Usually the individual raising the concern is not directly affected by the danger or illegality and they would rarely have personal interest in the outcome. They are merely trying to alert others and act as a messenger so that the matter can be addressed. They are not required to prove the malpractice, but must have a genuine belief and raise the concern in accordance with this policy and procedure.

A grievance concerns an individual personally, regarding being poorly treated or possibly involving a breach of their individual employment rights and where they would seek redress or justice for themselves. They would therefore have a vested interest in the outcome. The following are examples of grievances –

- Issues regarding pay or hours of work;
- The allocation of work or workload;
- Working environment or working conditions;
- Issues relating to relationships with colleagues;

- Complaints about type of work or duties an individual is asked to carry out e.g. something outwith their contract of employment;
- Complaints about insufficient training.

Existing Policies and Procedures

The Council has other existing policies and procedures in place to assist employees to raise concerns regarding the following types of issues which should be considered prior to the Whistleblowing policy:

- If an individual observes themselves, or has evidence that someone is being bullied or harassed, this should be reported through the Managing Bullying and Harassment Policy and Procedure.
- Issues relating to Child Protection should be referred to the Protecting Children in Aberdeen City Policy.
- Financial irregularities should be dealt with through referring to the Council's Financial Regulations.
- The Whistleblowing policy does not apply to complaints made by the general public. Any complaints from the general public should be dealt with through the External Corporate Complaints procedure. (Refer to separate statutory procedures for Social Care related complaints by service users).

This is a not an exhaustive list. It is the final determination of the Monitoring Officer to decide whether a complaint falls under the Whistleblowing policy and procedure and whether protection under the policy applies.

Appendix 3: Proforma to Monitoring Officer

Pro-forma to Monitoring Officer from the manager who has received the initial concern.

ABERDEEN CITY COUNCIL WHISTLEBLOWING POLICY

PROFORMA TO MONITORING OFFICER

The following complaint has been received from an individual who wishes to report a concern which may invoke protection under the Whistleblowing policy. The details below outline the complaint and await your determination.

Section 1

Name	Job Title
Service/Organisation	Work Location

Section 2

Please provide a brief outline of the complaint:

(Where possible please provide names, dates, history and background details of the complaint)

--

Has the concern been considered under an alternative policy? Please provide details:

--

Section 3

Has the complaint been investigated previously?

Yes No

If yes, who was the manager who undertook the investigation?

Please provide brief details of the outcome of any previous investigation below:

Please attach any correspondence relating to the complaint, along with this form, to the Monitoring Officer, Head of Legal and Democratic Services, 1st Floor, Town House, Broad Street, Aberdeen AB10 1FY.

Appendix 4: Model Letter to Individual from Manager receiving the Complaint

Date:

PERSONAL

Dear

REPORTING OF CONCERN UNDER WHISTLEBLOWING PROCEDURE

If written concern from worker:

I write to acknowledge receipt of your letter dated xx/xx/xx in accordance with the above procedure, and advise that the concern as outlined by yourself has been formally registered.

Or if verbal concern from worker:

I refer to our meeting of xx/xx/xx where you outlined a concern in accordance with the above procedure, and advise you that the concern has been formally registered.

Option 1 Initial determination by manager - possible Whistleblowing

I have passed the concern to the Monitoring Officer (or appointed representative) who will determine whether the concern qualifies for protection under the Whistleblowing policy. They will then write to you confirming whether your concern qualifies or not.

You will then be further notified, of the Monitoring Officer's determination of your concern and how the matter will be progressed, or otherwise.

Option 2 Initial determination not Whistleblowing

I have decided after careful consideration that your concern does not fall within the Whistleblowing policy and instead should be managed through another more appropriate means through the ***(Managing Discipline policy / Managing Grievances policy / Managing Bullying and Harassment policy) delete as appropriate***. As such you will be contacted shortly so that your concern can be taken forward.

Yours sincerely

Name of manager receiving complaint

Appendix 5: External Prescribed Regulators

Whilst it is hoped the Whistleblowing Policy will reassure employees to raise concerns internally, the Council accepts that employees safely or properly contact an appropriate external body. Below is a non exhaustive list of regulators or independent supervisory bodies which maybe relevant:

1. Health & Safety risks: HSE, Food Standards Agency
2. Environmental issues: Scottish Environment Protection Agency
3. Utilities: OFCOM, WICS, OFGEM.
4. Financial Services & the City: Financial Services Authority (and pending its full operation, its predecessor bodies); HM Treasury.
5. Fraud & fiscal irregularities: Serious Fraud Office, Inland Revenue & Customs.
6. Public sector finance: Audit Commission, Audit Scotland.
7. Company Law: Department for Business, Innovation and Skills.
8. Competition and consumer law: Office of Fair Trading, Local Authority
9. Others: Certification Officer (Trade Unions), Information Commissioner's office, Charity Commission, Criminal Cases Review Commission, Data Protection Registrar, The Pensions Regulator.

Appendix 6 Flow-chart

