



WHISTLEBLOWING

BRIEFING NOTE FOR MANAGERS

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1. What is Whistleblowing?

'Whistleblowing' is the popular term used when someone who works for or with an organisation raises a concern about something that they believe to be illegal, improper, unethical or dangerous. Workers are often the first to realise that something may be wrong within an organisation and it is important that they feel they have a procedure that allows them to raise their concerns within the organisation, rather than feeling constrained to keep quiet or raise their concerns outside.

It is important to distinguish whistleblowing from a worker's concerns about their own employment. The Council has Human Resources Policies that should be used to deal with individual workers' concerns about their own employment.

Whistleblowing concerns matters other than the worker's own employment where the interests of others or of the Council itself are at risk.

Paragraphs 2.2 and 2.3 of the Policy give examples of issues that may be dealt with under the Policy.

2. Why is it important to have a Whistleblowing Procedure?

Every organisation faces the risk that something will go badly wrong and ought to welcome the opportunity to address it as early as possible. Whenever such a situation arises the first people to know of the risk will usually be those who work for or with the organisation. Yet while these are the people best placed to raise the concern before damage is done, they often fear they have the most to lose if they do speak up. Workers need to feel that they can tell someone about their concerns without fear of being disadvantaged, victimised or harassed as a result.

If there are no procedures in place that allow workers to do that, there are no 'safe' alternatives for them. The consequences are:

They may keep quiet and the wrongdoing will continue

They may want to raise the matter internally but are worried about the consequences e.g. Will I have to prove it? What if they don't believe me? Will I be disciplined or victimised?

They may raise the matter externally e.g. the Press

An organisation where the value of open whistleblowing is recognised will be better able to:

- deter wrongdoing
- pick up potential problems early
- enable critical information to get to the people who need to know and can address the issue
- demonstrate to stakeholders, regulators and the courts that they are accountable and well managed

- reduce the risk of anonymous and malicious leaks
- minimise costs and compensation from accidents, investigations, litigation and regulatory inspections; and
- maintain and enhance its reputation

A good whistleblowing procedure will allow workers to raise genuine concerns safely and discretely internally, and will reassure them that they will not be disadvantaged in the workplace as a result. However, to be effective it is important that workers are aware of the policy, and that managers deal effectively with any concerns raised.

Whistleblowing means developing a culture of honesty and openness where workers feel able to raise their legitimate concerns and management welcome such interventions so that they can address any wrongdoing.

3. DCC Policy

The Council's current Policy is attached to this Note. This policy has recently been revised. It is also available on the Council's intranet and external website.

The Policy sets out how workers can raise concerns. Ideally, they should raise them with their line managers initially, but they may not always feel comfortable in doing so. The most important thing is that workers feel able to come forward. The Policy specifically states that they can raise their concern with whoever they feel most comfortable. The Policy in Section 7 sets out how they may ideally raise a concern and has an Appendix 1 which gives the contact details of those persons and bodies both internal and external that they may wish to discuss or raise a concern with.

The Policy is clear at paragraph 7.5 that Child Protection or Protection of Vulnerable Adults concerns should be referred immediately to the relevant co-ordinator.

4. The Consequences of Getting it Wrong

4.1 Some high profile examples:

- Clapham Rail Crash – supervisor had noticed faulty wiring months before but didn't want to rock the boat – 35 people died.
- Canoe deaths, Lyme Regis – Employee had warned MD by letter of safety concerns. Nothing was done. 4 children died & MD was sentenced to 2 years for corporate manslaughter.
- Robert Maxwell Pensions – union official & trustee of pension fund had raised concerns about use of money. Worker was sacked.
- Mid Staffordshire NHS Foundation Trust
- See website of Public Concern at Work (www.pcaw.org.uk) for more examples.

4.2 The Law

There is statutory employment protection for workers who raise concerns in good faith, provided by the Public Interest Disclosure Act 1998. If a worker is disadvantaged as a result of raising concerns (eg dismissal or demotion), the worker may complain to an Employment Tribunal and the employer may be ordered to pay compensation as a result. This right is available to all employees, including temporary staff. There is currently no statutory limit on the amount of compensation payable.

5. Culture

It is important to encourage a culture of openness within the Council, so that workers feel that they can raise concerns safely. It must be recognised that some workers may not be inclined to raise concerns with their line managers, so an alternative line of communication must be provided both within and outside their departments. Workers are more likely to be able to tell you of their concerns if there is an organisational culture of openness. Lead by example, make communication the culture and encourage staff to discuss their concerns.

Employees/Managers who victimise those who raise concerns or who raise concerns maliciously should be aware that these are disciplinary offences.

6. Confidentiality

The best culture is where an employee who has a whistleblowing concern feels it is safe and acceptable to raise the concern openly. This openness makes it easier for the organisation to assess the issues, to work out how to investigate the matters, to get more information and avoid the risk of a sense of mistrust or paranoia developing.

While openness is the ideal, in practice many workers will feel anxious about identifying themselves at the outset and will want you to keep their identity confidential. This should be respected and confidentiality observed if requested.

However it is important to be realistic with the worker, and explain that in some circumstances, you may have to reveal their identity if required by law, or if their evidence is required in disciplinary or criminal proceedings.

The Freedom of Information Act 2000 and the Data Protection Act 1998 both give people access to information held by public bodies subject to exceptions. Both Acts have exceptions or exemptions allowing public bodies to withhold information relating to the identity of individuals. The Council's decision in such matters is not final, however, and it is possible that the Information Commissioner or Information Tribunal could order the disclosure of information which does not itself reveal the identity of a whistleblower but could be used with other information in the possession of a third party to deduce the identity of the whistleblower.

You should make it clear to the worker that even though the worker's name will not be mentioned you cannot guarantee that others will not try to deduce, correctly or otherwise, their identity. This is another reason why open whistleblowing is sometimes the best approach.

If you give an assurance of confidentiality you should honour it unless the worker or the law releases you from it. However assure the worker that you will contact them again if you need to reveal their identity, e.g. Can I give your identity to 'x' in Internal Audit who will be investigating the issue?

Of course, you may need to disclose the information that the worker gives you to a third party in order to investigate the matter and you need to make this clear to the worker.

Sometimes workers will be concerned that it is obvious that it is they who have raised the concerns. Explore this issue with them. Sometimes it may be easier for them to be open and say 'Yes, I raised it because I think it was wrong'.

Be sure to protect the worker from reprisals in this situation. It may be necessary to make temporary moves while a matter is under investigation. You should think carefully how to address this to protect the informant without effectively victimising them for revealing the problem.

Concerns that are raised anonymously (ie you don't know who is raising the concern) carry less weight. You should seek the advice of the Head of Legal and Democratic Services if you receive anonymous concerns.

7. Training/Awareness Raising

The importance of raising the awareness of staff to the procedure cannot be overstated. Staff need to know that the Whistleblowing Policy exists and that there is a safe line of communication for raising concerns internally. Managers need to be open to concerns and to know how to react if the whistle is blown.

All managers are therefore responsible for familiarising themselves with this Briefing Note, the Policy and for providing cascade training to all persons within their teams who have supervisory responsibilities. A brief Powerpoint presentation is available from the Head of Legal and Democratic Services to assist with this.

The Council's Corporate Governance Committee is responsible for overseeing the Council's Whistleblowing regime and it has recommended that awareness of the Policy is raised and monitored on a regular basis. This will be achieved via the training referred to above and surveys of staff and manager awareness. The Policy will be available on the intranet and external website. The guidance note will be available on the intranet

8. What should I do if the whistle is blown?

Follow the Action Plan:

- a. Thank the worker for raising their concerns with you, and assure them that you will look into it.
- b. Be realistic with the worker. You may not be able to resolve all their issues, but you will deal with them expeditiously and fairly. Assure them they do not need to prove their allegations, but you will need to know what grounds they have for believing that wrongdoing has happened. You can use the report form appended to the Policy as a way of recording and eliciting this information.
- c. Treat the worker as a witness, not a complainant.
- d. Offer anonymity if the worker requests it (see paragraph 6 above), but explain the parameters of this.
- e. Once you have had a concern reported to you, you must (in accordance with paragraph 8.2 of the Policy) in turn report the concern to the Monitoring Officer (Head of Legal and Democratic Services) within three working days.
- f. The Monitoring Officer will liaise with the Head of Internal Audit to consider the most appropriate method of investigating the concern.
- g. Take any urgent action before the investigation starts.
- h. Keep the worker informed. Within 10 working days of a concern being raised, you must write to the worker acknowledging their concerns, indicate how it is proposed to deal with the matter, estimate how long it will take to provide a final response, tell them what initial enquiries have been made, supply information on staff support (if necessary), and tell them what further investigations will take place, and if not, why not.
- i. If the matter has been determined by the Monitoring Officer and Head of Internal Audit to be one that is suitable for investigation by the management of your Department, undertake the investigation yourself or refer it to your line manager if appropriate (depending upon the terms of any confidentiality you have agreed to).
- j. Advise the worker of the outcome of the matter, when concluded (subject to any legal constraints).
- k. Take any steps necessary to protect the worker from reprisals.
- l. You must ensure that the outcomes of the investigation are reported to the Monitoring Officer.

9. Reviews

The Head of Legal and Democratic Services/Monitoring Officer is responsible for monitoring the use and effectiveness of the whistleblowing policy. If a worker raises concerns with you, you must advise the Head of Legal and Democratic Services who keeps a record of concerns raised and the outcomes (in an anonymous manner). This record is reviewed periodically to assess whether the policy works effectively and whether further action is needed to raise awareness amongst staff. The Head of Legal and Democratic Services also reports annually to the Corporate Governance Committee on the operation of the Policy.

10. Contacts & Advice

For further information/advice on whistleblowing, please contact:

Gary Williams, Head of Legal and Democratic Services/Monitoring Officer Tel: 01824 712562

Lisa Jones, Deputy Monitoring Officer Tel: 01824 706275