



## WHISTLE BLOWING - PUBLIC INTEREST DISCLOSURE POLICY

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## **1. INTRODUCTION**

- 1.1 Midlothian Council is committed to supporting employees who identify serious misconduct either within the Council or with other bodies or contractors who work with the Council. Where an employee has reasonable grounds for believing that misconduct has occurred, is occurring or is likely to occur, then this Policy provides a mechanism for their concerns to be raised within the Council.
- 1.2 The purpose of this Policy is to encourage and enable Council employees to make known any serious concerns about breaches of law, codes of practice, bribery or other corrupt practices or any other wrong doing within the Council, and thus allow for internal investigation of any alleged malpractice or misconduct. For the purposes of this policy the term 'employee' includes permanent and fixed term employees; casual and supply workers; agency workers; volunteers; and those on secondment from other organisations.
- 1.3 Generally 'Whistle-blowing' is 'making a disclosure in the public interest' and occurs when a Council employee provides information to the relevant person within the Council to show that they reasonably believe that one or more of the following events has happened, is happening or is likely to happen:
- (a) criminal offence;
  - (b) failure to comply with any legal obligation;
  - (c) miscarriage of justice;
  - (d) danger to health and safety of any individual;
  - (e) risk of actual or likely damage to the environment; or
  - (f) deliberate concealment of any of the above.
- 1.4 This Policy reflects the provisions and conditions of the Public Interest Disclosure Act 1998 (PIDA).

## **2. SCOPE**

- 2.1 This Policy applies to all employees as detailed in paragraph 1.2 above (from day one of their appointment) who wish to make a disclosure to the Council. This includes all teaching staff, those on Scottish Negotiating Committee of Teachers (SNCT) Terms and Conditions and Chief Officials.
- 2.2 This Policy does not apply to matters relating to an employee's own employment, for which reference should be made to the Council's Resolution Procedure (Local Government Workers), Grievance Procedure (Teachers and those on SNCT Terms and Conditions), or other relevant People Management Policies and procedures.

### **3. KEY PRINCIPLES**

- 3.1 The Council considers that a clear mechanism enabling employees to raise serious concerns of wrongdoing or malpractice is important in maintaining the high standards of integrity, honesty and professionalism in the work place which is expected of those serving the public. It ensures that serious concerns are reported promptly and properly and are appropriately investigated and that employees who raise concerns in accordance with this Policy are protected from suffering detriment and / or being unfairly dismissed because they have disclosed information relating to such concerns.
- 3.2 The Council recognises that the decision to report a concern can be a difficult one for an employee to make. Employees may therefore wish to seek their own independent legal advice or advice from a trade union representative before making a disclosure to the Council.
- 3.3 To make a protected disclosure to the Council in terms of this Policy an employee must:
- disclose information (and not mere speculation) in relation to one or more of the grounds referred to in paragraph 1.3 above;
  - have a reasonable belief in the disclosure being substantially true;
  - not act maliciously or make false allegations; and
  - not seek any personal gain.
- 3.4 The Council will not tolerate any harassment, victimisation or other detrimental treatment of an employee because they have made a protected disclosure. The Council will invoke the provisions of the appropriate Disciplinary Procedure or other appropriate procedure against those who put pressure on, bully, harass, victimise or treat less favourably an employee who has made a protected disclosure.
- 3.5 Any employee who has made a protected disclosure and believes they have been victimised as a result will have recourse to the Resolution Procedure (Local Government Workers) or Grievance Procedure (Teachers and those on SNCT Terms and Conditions) or Policy on the Prevention of Harassment and Bullying at Work.
- 3.6 The Council will seriously consider concerns raised and will take the appropriate course of action in the circumstances.
- 3.7 The Council recognises that an employee making a disclosure under this Policy will wish to be assured that the matter is being addressed. The Council will, subject to any legal and confidentiality constraints, provide that employee with information on the outcome of the consideration or course of action.
- 3.8 Where an employee who is already the subject of a disciplinary or other investigation makes a disclosure, the disciplinary or other procedure will not normally be halted as a result of the making of that disclosure.

- 3.9 Where an employee is suspected to have acted maliciously in making false allegations this will be investigated under the terms of the relevant Disciplinary Procedure and may result in disciplinary action being taken.

## **4. MAKING A PROTECTED DISCLOSURE**

- 4.1 The earlier a concern is raised, the easier it is to take appropriate action. Employees may raise the concern directly, or may seek support from a trade union or professional association to raise the concern on their behalf.
- 4.2 The person making the disclosure must reasonably believe their disclosures are made in the public interest.
- 4.3 As a first step, disclosures should normally be raised with the Internal Audit Manager. Where disclosures are made in the first instance to Management, Heads of Service, Directors or the Chief Executive, these officers should also inform the Internal Audit Manager.
- 4.4 The disclosure should, as far as is reasonable, be raised in writing, giving any relevant background and history and other information (for example names, dates and places) and setting out the reason for concern.
- 4.5 Where it is not feasible to raise the concern in writing, the employee or trade union or professional association acting on their behalf can raise the concern verbally to the relevant manager or book a confidential appointment with the Internal Audit Manager.
- 4.6 The Council will do its utmost to protect the identity of those who raise concerns and do not want their names disclosed. However, this cannot be guaranteed in all circumstances. It must be remembered that any investigation process may reveal the source of the information and a statement by the employee raising the disclosure may be required as part of the evidence necessary to properly deal with the concern.
- 4.7 Anonymous disclosures will be considered on their merit taking into account the seriousness of the allegations raised, the credibility of the concern and the likelihood of confirming the allegation from other sources.
- 4.8 The Council's Internal Audit Manager will consider all disclosures raised and will:
- log the concern;
  - acknowledge to the employee or trade union / professional association acting on their behalf that the concern has been received;
  - confirm with the employee or trade union / professional association that they have read and understood this policy;
  - consider the best course of action in terms of any investigation; and
  - consider whether the concern is part of a wider investigation.

- 4.9 The action taken by the Council will depend upon the nature of the concern. The matters raised may:
- be investigated internally;
  - be referred to Police Scotland;
  - be referred to the Council's External Auditor;
  - be referred to another appropriate Public Authority or regulatory body; or
  - form the subject of an independent enquiry.
- 4.10 Some concerns may be resolved without the need for investigation.
- 4.11 Where a meeting with the employee raising the concern is required, he or she will have the right, should they wish, to be accompanied by a trade union or professional association representative or a work colleague who is not involved in the area of work related to the concern.
- 4.12 The Council will, subject to any legal and confidentiality constraints, provide that employee with information on the outcome of the consideration or course of action.
- 4.13 If an employee decides to blow the whistle to a prescribed person rather than Midlothian Council, he/she must make sure that they have chosen the correct person or body for their issue. Further details can be found at <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>

## 5. FURTHER INFORMATION

- 5.1 Advice and guidance on how matters of concern may be pursued is available from the Internal Audit team on 0131 271 3517 or 3285 or by email at: [InternalAudit@midlothian.gov.uk](mailto:InternalAudit@midlothian.gov.uk)
- 5.2 Trade unions and professional associations can provide advice, guidance and support.
- 5.3 Information is also available on the Council's website at: [Link](#)
- Concerns can be reported (anonymously if desired) via the Council's website under 'Report, Fraud, Corruption and Whistle-blowing' [Link](#).
- 5.4 General information can also be found on the ACAS website at: <http://www.acas.org.uk/index.aspx?articleid=1919>
- and on the gov.uk website at: <https://www.gov.uk/whistleblowing>

## 6. VERSION CONTROL

Date	Details of Amendment/Revision	Authorised Officer
12/08/2015	Updated in line with legislation. Removal of 'in good faith' in order to be a protected disclosure – person making the disclosure must reasonably believe it is in the public interest; inclusion of link to list of prescribed persons; confirmation that employee has recourse to grievance procedure if they feel they have been victimised as a result of making a protected disclosure.	Elaine Aitken
18/02/2016	Change to requirement for all cases to be reported into Internal Audit Manager / other minor updates by Audit and Legal.	Graham Herbert / William Venters
13/07/2016	Formatting changes, link updates.	Heather Mohiedeen
02/11/2016	Review of proposed updates by Legal and Audit to policy.	Graham Herbert/ Elaine Greaves

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