



WHISTLE BLOWING - PUBLIC INTEREST DISCLOSURE POLICY

1. INTRODUCTION

- 1.1 Midlothian Council is committed to supporting employees who reveal serious misconduct either within the Council or other bodies or contractors who work with the Council. Where an employee has reasonable grounds for believing that such 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 enable employees to raise serious concerns within the Council, rather than over-looking a problem or 'blowing the whistle' outside of the Council, and thus allow for the internal resolution of any alleged malpractice or misconduct. For the purposes of this policy the term 'employees' includes casual and supply workers and temporary agency workers.
- 1.3 Generally, 'Whistle-blowing' is 'making a disclosure in the public interest' and occurs when a Council worker 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) danger to the environment; or
 - (d) 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, casual and supply workers and temporary agency workers (from Day One) who wish to make a disclosure to the Council, as their employer. This includes all teaching staff 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 Grievance Procedure or other relevant procedure.

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 upholding the high standards expected in public life. It ensures that serious concerns are appropriately investigated and that employees who properly raise the concerns 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 to make for an employee. 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 allegations) in relation to one or more of the grounds referred to in paragraph 1.3 above.
 - Disclose the information in good faith.
 - Have a reasonable belief in the disclosure being substantially true.
 - Not act maliciously or make false allegations.
 - 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 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 The Council will seriously consider concerns raised and will take the appropriate course of action in the circumstances.
- 3.6 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.
- 3.7 Where an employee who is already the subject of a disciplinary or other investigation makes a disclosure, the disciplinary or other procedure will not be halted as a result of the making of that disclosure.
- 3.8 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 disclosure must be made in good faith, which means with honest intent and without malice and the employee making the disclosure must believe the information is substantially true.
- 4.3 As a first step, disclosures should normally be raised with the relevant Head of Service. If this is not possible, for example because of sensitivity, the seriousness of the allegations or the belief that management is involved, the disclosure should be made to the relevant Director, the Chief Executive or the Risk and Audit Manager. Managers and senior management notified of a concern have a duty and responsibility to ensure that concerns raised are taken seriously and to promptly seek advice from the Risk and 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 Risk and 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 allegations 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 Risk and Audit Manager will consider all disclosures raised. The Risk and Audit Manager will:
 - Log the concern.
 - Acknowledge to the worker or trade union or professional association acting on their behalf that the concern has been received.
 - Confirm with the worker or trade union or professional association that they have read and understood this policy.
 - Consider the best course of action in terms of any investigation.
 - 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 the Police;
 - Be referred to the 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, solicitor or a 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.

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 3284 or 3285 or by e-mail at 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:
http://www.midlothian.gov.uk/info/697/publications/93/policy_on_fraud_corruption_and_whistleblowing
- Concerns can be reported (anonymously if desired) via the Council's website under 'Report It, Fraud, Corruption and Whistle-blowing'.
- 5.4 General information can also be found on the ACAS website at:
<http://www.acas.org.uk/index.aspx?articleid=1919>