

Whistleblowing Procedure and Guidance

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SECTION 1: INTRODUCTION

This procedure supports the Council's Whistleblowing policy and details the sequence of steps to be followed to implement the policy.

The Council's whistleblowing procedure should be used to assist workers who have serious concerns or believe they have discovered malpractice or wrongdoing in the organisation. It is intended to encourage and enable workers to raise such concerns within the Council rather than overlooking the issues or raising them outside the organisation. It allows for this information to be disclosed without fear of reprisal and independently of their line management if appropriate.

What is whistleblowing?

It is where an individual within an organisation voices their concern in relation to malpractice or wrongdoing in the organisation.

Relevant Legislation

The Public Interest Disclosure Act 1998 (as amended by the Enterprise and Regulatory Reform Act 2013) protects individuals against being dismissed or penalised by their employers as a result of disclosing certain serious concerns. The Public Interest Disclosure Act 1998 added to the protections contained in the Employment Rights Act 1996 by incorporating protections for whistleblowers. These provisions ensure that no-one should be disadvantaged in raising legitimate concerns.

The legislation protects a worker who makes a whistleblowing complaint from suffering detriment as a result of raising concerns. The term "worker" is given a wide definition in the legislation and covers the types of individuals noted in the "who does the procedure apply to?" section below.

Why should an individual whistle blow?

If an individual becomes aware of a whistleblowing issue, they should be encouraged to 'blow the whistle', as:

- if they don't do so 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 and should not fear raising concerns in case they are subjected to disadvantage;
- an individual who conceals malpractice could become questionable themselves; and
- the organisation's reputation could be damaged if the concern comes to light by other means.

Legal Protection

The law seeks to encourage individuals to raise concerns by whistleblowing by protecting them from potential negative consequences which could arise from being a whistleblower. Whistleblowers have the right not to be subject to detriment because they have blown the whistle. Whistleblowers are protected whilst they are in employment and after employment has ended (an example of post-employment detriment would be refusal to give a reference for a former employee who was a whistleblower). If an employee is dismissed because they were a whistleblower the dismissal will be automatically unfair. An employee will also be unfairly dismissed if they are selected for redundancy because they were a whistleblower.

Using the Council's Procedure

The Council's whistleblowing procedure 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 such concerns within the Council rather than overlooking the issues or raising them outside the organisation. It allows for this information to be disclosed without fear of reprisal and independently of their line management if appropriate.

Who the procedure applies to

This procedure 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. A concern can be raised by a junior employee/worker against a more senior individual or against an employee/worker at the same or similar level in the organisation as the person who raised the matter. In this procedure a person raising a concern by whistleblowing is referred to as a whistleblower.

Job applicants and persons who carry out work or services for another party who is their customer or client are excluded from the legal protections for whistleblowers.

Situations where the procedure should not be used

It should not be used to reconsider matters which have already been addressed through other procedures e.g. Dignity and Respect at Work, Managing Discipline, Managing Grievances.

Individuals who are unsure about the application of the procedure can raise queries in confidence by e-mailing AskHR@aberdeencity.gov.uk.

Qualifying disclosures

To be protected as a whistleblower the person raising the concern needs to make what's called a 'qualifying disclosure' about malpractice where one or more of the following has been, is being or is likely to be committed:

- a criminal offence;
- a failure or likely failure to comply with any legal obligation;

- a miscarriage of justice;
- putting health and safety of any individual in danger;
- damage to the environment; or
- deliberate concealment relating to any of the above.

The procedure is intended to cover concerns which are in the public interest.

Non-qualifying disclosures

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

- The law is broken when making a disclosure (e.g. if the Official Secrets Act is breached)
- The information is protected under legal professional privilege (e.g. if the information was disclosed for the purpose of obtaining legal advice).

Conditions for an individual making a disclosure

To be protected as a whistleblower the disclosure must be 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 this procedure.

Confidentiality

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

SECTION 2: THE PROCEDURE

The Council's procedure comprises four steps:

Step 1 :Reporting a Concern

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. If this is not appropriate or would be difficult then the individual should seek to contact a more senior Manager or their Chief Officer. If this is not appropriate the formal part of the procedure can

be invoked and the whistleblower may contact the Monitoring Officer (currently the Chief Officer, Governance) using the form at Appendix 3. Advice and support can be sought from a trade union or work colleague.

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

Wherever possible, a whistleblower 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 a whistleblower does not feel able to raise concerns in writing, they may telephone the appropriate officer or arrange to meet the officer face to face.

Step 2: Determining how the Concern will be dealt with

When a concern 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.

Consideration of Other Procedures

The Whistleblowing procedure is intended to cover major concerns that fall outwith the scope of other 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

It should be recognised that there is a difference between a grievance and whistleblowing.

A whistleblowing concern is regarding the conduct in the workplace which the complainant genuinely believes falls within the whistleblowing criteria and where a concern is raised in relation to danger or illegality which affects others e.g. customers, the public or an employee. 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. The individual raising the concern must have the reasonable belief that it is in the public interest to make a disclosure under the whistleblowing rules. They are not required to prove the malpractice but must have a genuine belief that it is taking place and raise the concern in accordance with this 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 procedure:

- If an individual observes themselves or has evidence that someone is being bullied or harassed, this should be reported through the Dignity and Respect at Work Guidance.

- 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 procedure 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 which can be found on the Council's website.

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 procedure and whether protection under it applies.

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 form at 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 acknowledge receipt of their concern and inform on 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 procedure, the appropriate route should be progressed to take the matter forward.

Step 3: The Formal Investigation

The Monitoring Officer shall appoint a suitable Investigating Officer who has the necessary skills and knowledge to investigate the reported concern and to determine whether it is appropriate to be investigated within or out with the Cluster involved.

Where the concern relates to an issue of financial irregularity, the matter will be dealt with in accordance with the 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 the 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 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 (a template report is provided at appendix 5). 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 for the Monitoring Officer alone.

Reporting to external bodies

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

Step 4: Outcome of the Complaint

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 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 that 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 Chief Officer 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 be reported to the Chief Executive, with the Monitoring Officer reserving the right to report the matter to the relevant 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 'Protect', an independent external organisation that can advise on progressing whistleblowing issues.

Where the employee is dissatisfied following the outcome

Where an individual is not satisfied that this procedure has been applied properly or appropriately, they may raise the matter directly with an Executive Director. This should be done within 10 working days of receipt of the outcome letter.

SECTION 3: KEY ISSUES TO CONSIDER

Victimisation

The Council will protect any individual who makes a disclosure in accordance with this 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 procedure 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 considered:

- the seriousness of the issue(s) raised;
- the likelihood of obtaining information from alternative sources which would confirm the individual's concerns can be evidenced.

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 action under the Managing Discipline procedure.

Employee Wellbeing

Understandably, the whistleblowing process can be a difficult period for all involved. The health and wellbeing of all employees should be a priority at each stage.

Available support and avenues of advice.

- Trade Unions
- Citizens Advice Bureau - www.cas.org.uk
- ACAS Point - www.acas.org.uk
- Employee Relations and Wellbeing Team for procedural advice

- • Mental Health and Wellbeing Pages: these are available on People Anytime and provide a variety of support resources, skills/training information and details about the Councils Mental Health First Aiders Network.
- • Counselling Service: The Council provides a free, confidential 24-hour counselling service. The service offers a helpline for general advice and guidance, psychological guidance and emotional support and/or individual counselling either face to face or over the phone. and has no role in the consideration of any complaints by Council officers/management. Further details can be accessed on People Anytime.
- • Workplace Chaplaincy Service
- • Trade Unions

SECTION 4: APPENDICES

- Appendix 1.** Examples of Whistleblowing
- Appendix 2.** Pro-forma to Monitoring Officer
- Appendix 3.** Model Letter to Individual from Manager receiving the Complaint
- Appendix 4.** Template report
- Appendix 5.** External Prescribed Regulators
- Appendix 6.** Flow-chart

Appendix 1: Examples of Whistleblowing

Below are example scenarios of the types of issues that may be covered under the procedure. Appendix 1 – Examples of Whistleblowing

Example 1

An individual reports that 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 from another individual 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 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.

ABERDEEN CITY COUNCIL WHISTLEBLOWING PROCEDURE

COMPLAINT FORM 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 procedure. The details below outline the complaint and await your determination.

Section 1

Name	Job Title
Cluster/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 procedure? 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, Chief Officer, Governance, Aberdeen City Council, Marischal College, 1st Floor South, Business Hub 6, Broad Street, Aberdeen, AB10 1AB.

Appendix 3: 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 procedure. 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, and following consultation with the Monitoring Officer that your concern does not fall within the Whistleblowing procedure and instead should be managed through another more appropriate means through the ***(Managing Discipline Policy / Managing Grievances Policy / Dignity and Respect at Work Policy)*** ***delete as appropriate.***

Appendix 3: Model Letter to Individual from manager receiving the complaint

As such you will be contacted shortly so that your concern can be taken forward.

Yours sincerely

Name of manager receiving complaint

INVESTIGATORY REPORT
WHISTLEBLOWING INVESTIGATIONS

EMPLOYEE DETAILS

Name		Employee Number	
Job Title			
Employing Team and Cluster			

SUMMARY OF COMPLAINT(S)

Set out the complaint(s) and attach the form submitted by the employee or their line manager, as applicable.

INVESTIGATION TIMELINE

Investigation allocated	Insert dates	Draft report sent to P&CS (if applicable)	
Employee response received		Report completed	
P&OD Advisor Consulted (if applicable)	Insert name		

PROVISION OF STATEMENTS

	Name	Job title	Date of Statement
Statement 1	Employee		
Statement 2	Witness		

Under this heading, list who provided statements. Statements must be given a statement number and this number should be referred to in the main body of the report and included as an actual appendix at the end of the report.

OTHER DOCUMENTARY EVIDENCE

	Description
Appendix 1	
Appendix 2	

Under this heading, specify any other documentary evidence that you referred to (e.g. timesheets, claim forms, audit records, codes of practice, terms and conditions etc)

E.g, Appendix 2, Time sheets for period 1 January to 31 March

FURTHER INFORMATION PROVIDED BY THE EMPLOYEE

Where a face to face meeting was carried out, you should attach a detailed summary of the meeting. Where a statement was provided, you should attach the employee’s written statement as Statement 1.

This section should clearly summarise the employee’s complaint and any other details they put forward in support of their complaint.

SUMMARY OF EVIDENCE AND OUTCOME OF INVESTIGATION

There should be a summary of all findings from the investigation taking into consideration the employee’s response to the questions asked compared with witness statements (considering their credibility) and any other evidence presented e.g. facts, figures, documentation considered.

Give clear reasons for arriving at the conclusions, taking each complaint in turn (where more than one was lodged), detailing the evidence that both supports/does not support the complaint(s). Remain factual and objective.

Conclude the outcome of the investigation, what you as the Investigating Officer think based on the evidence gathered i.e. whether you consider that there is sufficient evidence in support, or otherwise, of the complaint(s).

Note: it will ultimately be the decision of the Monitoring Officer whether the complaint is upheld.

INVESTIGATING OFFICER’S DETAILS

Name		Job title	
Cluster			
Tel		Email	

MONITORING OFFICER’S DETAILS

Name		Job title	
Cluster			

Appendix 5: External Prescribed Regulators

Whilst it is hoped the Whistleblowing procedure will empower 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 may be 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, Accounts Commission for 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, Commissioner for Ethical Standards in Public Life in Scotland (Councillors/Members of a devolved public body)

Further information can be obtained via the following weblink:
<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>

