

Appendix 2 – Somerset Council Whistleblowing Policy

Introduction

The term whistleblowing is generally used only with reference to workers and has a specific legal definition under the Public Interest Disclosure Act 1998, i.e., a disclosure of information which, in the reasonable belief of the worker, is made in the public interest and tends to show serious misconduct. In a non-legal context, the term might also be used to describe a similar disclosure of information, by anyone who is not a worker. The Council recognises that as a public body, it might receive a disclosure of information, not just from its workers, but from members of the public as well.

The term 'worker' includes an employee of the Council, agency staff, contractor or consultant doing work for the Council, collectively referred to in this policy as "employees". A member of the public will be anybody not falling within the definition of 'employees', which could include, the parent of a child at a school, or any person who uses Council services.

This policy applies to disclosures from employees, but also sets out the Council's commitment to deal with disclosures from members of the public in the same way. To this end, where this policy refers to a "whistleblower", it refers to both employees and members of the public who make a disclosure. In this policy, receipt of any such information will simply be referred to as a "concern" or a "disclosure".

Somerset Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, we wish to encourage employees and members of the public, who have serious concerns about any aspect of the Council's work to come forward and voice those concerns.

Employees are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

This policy is intended to encourage and enable individuals to raise concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside. The policy makes it clear that individuals can do so without fear of victimisation, subsequent discrimination or disadvantage. The Council is committed to listening to concerns, taking them seriously and ensuring that they are dealt with promptly and fairly.

The policy will be published to ensure that it is available and accessible to employees and members of the public.

The policy can also be used to raise concerns about suppliers and those providing services under a contract with the Council in their own premises, for example, care homes or schools.

The policy is in addition to the Council's Complaints Procedure and other statutory reporting procedures applying to some service areas. A decision on which route each concern takes will be made upon receipt.

There is a Grievance Procedure in place for employees to raise a concern relating to their own employment. The policy is based on the Department for Business Innovation & Skills: Guidance for Employers and Code of Practice and has been discussed with the relevant trade unions and professional organisations and has their support.

In addition to the Council's commitment to protect employees who raise concerns, the Public Interest Disclosure Act 1998 provides a worker with potential protection from detriment and dismissal for making a 'qualifying disclosure'. The Act has rules for making a protected disclosure:

- You must reasonably believe the disclosure is in the public interest.
- You must believe it to be substantially true.
- You must not act maliciously or make false allegations.
- You must not seek any personal gain.

An employee who raises a concern under this policy and reasonably believes the disclosure is in the public interest, will be protected from any claim of defamation by the Council's insurance policy.

Aims and Scope of the Policy

This policy aims to:

- Encourage employees and members of the public to feel confident in raising serious concerns and to question and act upon concerns about practice;
- Provide avenues for employees and members of the public to raise concerns and receive feedback on any action taken;
- Ensure that employees and members of the public receive a response to concerns and that they are aware of how to pursue them if they are not satisfied;
- Reassure employees and members of the public that they will be protected from possible reprisals or victimisation if they have a reasonable belief that the disclosure made is in the public interest.
- Assist with deterrent and detection of wrongdoings.

This policy is intended to cover major concerns reasonably believed to be in the public interest in one or more of the following categories:

- Criminal offences, for example, fraud, theft, physical or sexual abuse.
- Failure to comply with an obligation set out in law.
- Miscarriages of justice.
- Abuse or bullying of clients including children and vulnerable people, Evasion of statutory responsibilities.
- Unauthorised use of public funds or other assets.
- Abuse of power for financial or other gain.
- Endangering of someone's health and safety (employee or member of the public).
- Damage to the environment.
- Other causes of malpractice, negligent, unprofessional or unethical behaviour.
- Covering up wrongdoing in the above categories.

Thus, serious concerns which you have about any aspect of service provision or the conduct of employees or members of the Council or others acting on behalf of the Council can be reported under the Whistleblowing Policy. This may be something that:

- makes you feel uncomfortable in terms of known standards, your experience or the standards you believe the Council subscribes to; or
- is against the Council's Standing Orders, Financial Regulations and policies; or
- falls below established professional standards of practice; or
- amounts to improper conduct.

The whistleblowing procedure cannot be used as an alternative to the council's grievance or safeguarding policy and procedures. Whistleblowing usually has an element of public interest attached to it. Typically, the matter involved presents a risk to others, such as customers, taxpayers, or the environment. A concern about your own employment situation is more properly addressed by means of the council's grievance procedure.

How to Raise a Concern

If you are an employee who has a concern, we hope you will feel able to raise it first with your line manager or Director in writing. To assist you, the concern should be copied to the whistleblowing generic email address: confidential@swapaudit.co.uk (the confidential phone number is 020 8142 8462).

If you feel unable to raise the matter with your Line Manager or Director, for whatever reason, please raise the matter through the confidential phone number on 020 8142 8462 or email to confidential@swapaudit.co.uk. This line is monitored by our Internal Audit provider, South West Audit Partnership (SWAP). SWAP is independent of the Council.

If you are a member of the public, please raise your matter directly with SWAP on the contact details above.

A member of staff will take your call, which will be in complete confidence. It is always helpful if you can give a little background information, but if you are not comfortable doing so, please just leave your contact details. You can leave a home or mobile number if you don't want to be contacted at work, but please let the call recipient know when it would be convenient for you to be called back.

After you make your initial contact, the hotline staff will pass a message on to a member of the SWAP Counter Fraud and Investigations Team who endeavour to respond to all initial calls within 48 hours (excluding weekends). They will then consider what action should be taken.

It is sometimes necessary to undertake an investigation. Investigations are undertaken by staff who have the technical and professional skills relevant to each particular case.

If the above channels have been followed but you continue to have concerns or believe that those listed above are implicated then you should approach one of the following:

- The Chief Executive.
- The Head of Governance and Democratic Services (who is also the Council's Monitoring Officer).

Please consider that:

- When raising a concern, you must declare any personal interest you have in the matter.
- The earlier you express the concern, the easier it is to act.

Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate that there are reasonable grounds for a concern. However, you must not attempt to investigate a concern or accuse individuals directly.

Advice and guidance on how to pursue matters of concern may also be obtained from:

- HR Advisory Service
- The Council's Legal Team
- Your trade union/ a professional association representative.

Employees may wish to consider discussing concerns with a colleague first and may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns.

Employees may invite a trade union /professional association representative or work colleague to be present during any meetings or interviews in connection with the concerns raised. Meetings can be arranged off-site if necessary.

If there is an immediate risk call 999 for emergency services or 101 for local Police.

If you have concerns regarding abuse to adults or children you may also contact Safeguarding on 0300 123 2224 or out of hours on 0300 123 23 27.

How Will We Respond

The Council (or SWAP) will respond to your concerns as quickly as possible. Do not forget that testing out your concerns is not the same as either accepting or rejecting them.

The action taken by the Council will depend on the nature of the concern. Where appropriate, the matters raised may:

- be investigated by management or SWAP Internal Audit Services;
- be referred to the Police;
- be referred to an external auditor;
- form the subject of an independent inquiry;
- be dealt with under a more appropriate Council procedure.

In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle is the public interest. Concerns or allegations which fall within the scope of specific procedures (for example, child protection or discrimination issues or financial irregularities) will normally be referred for consideration under those procedures.

Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.

Within ten working days, the Council (or SWAP) will write to you:

- acknowledging that the concern has been received;
- indicating how they propose to deal with the matter giving an estimate of how long it will take to provide a final response;
- telling you whether any initial enquiries have been made;
- supplying you with information on staff support mechanisms, and
- telling you whether further investigations will take place, and if not, why not.

The amount of contact will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from you.

The Council will take steps to minimise any difficulties which you may experience as a result of raising a concern. For example, if you are required to give evidence as an employee, the Council will arrange for you to receive advice about the procedure from a nominated officer, usually someone from HR or legal.

The Council accepts that you need to be assured that the matter has been properly addressed and you will be informed of the final outcome of the investigation. In some circumstances, however, it may not be possible to reveal the full details where this relates to personal issues involving a third party or legal constraints.

If you make an allegation that you reasonably believe is in the public interest but it is not confirmed by the investigation, no action will be taken against you.

Support

If you are unsure whether to use this policy or want independent advice or support at any stage, you may contact The independent charity Protect (formerly Public Concern at Work) on 020 3117 2520. Their advisers can give you free confidential advice on how to raise a concerns appropriately.

How the Matter can be taken Further

This policy is intended to help you raise concerns you may have. Hopefully, you will be satisfied with any action taken. If you are not, there are other people you can contact and these are:

- the External Auditor;
- your Trade Union/professional association;
- relevant professional bodies or regulatory organisations (for example Health and Safety Executive)
- Public Concern at Work
- an elected Member of the Council
- the Police;
- the ombudsman;
- your own solicitor.

If you do take the matter outside the Council, you should ensure that you do not misuse confidential information. The person you contact should be able to advise you on this.

The policy, in line with the legislation, provides protection for employees who raise concerns internally. It is inconsistent with the satisfactory operation of the policy to pursue such concerns with the media (newspapers, TV, radio, etc) and employees who do so are unlikely to be protected by the provisions of the Public Interest Disclosure Act and may be subject to disciplinary action.

Anonymous Allegations

This policy encourages you to put your name to your allegation whenever possible.

Concerns expressed anonymously or through a third party are much less powerful and may not be possible to investigate. SWAP will discuss these with the Council's Monitoring Officer, and it will be at their joint discretion as to whether the concern will be considered further.

In exercising this discretion, the factors to be taken into account would include:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

Harassment or Victimisation

The Council recognises that the decision to report a concern can be a difficult one to make. The Council will not tolerate any harassment or victimisation (including informal pressures) and will take action to protect you when you raise a concern where you reasonably believe the disclosure is in the public interest.

Disciplinary action will be taken against an employee if they try to stop you from raising a concern or if an employee is responsible for any act of recrimination against you for raising a concern.

Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect you.

Confidentiality

All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish. It must be appreciated, however, that the investigation process may reveal the source of the information, and that a statement may be required as part of the evidence and/or you may be asked to come forward as a witness at the appropriate time. We will keep your identity confidential, if that is what you

want, unless required to disclose it by law (for example, by the police or if it is required to be disclosed for the purposes of subsequent disciplinary action).

False Allegations

If an allegation is knowingly made frivolously, maliciously or for personal gain, disciplinary action may be taken. The Whistleblower does not need evidence but instead need to have reasonable belief that the concerns raised are true.

The Responsible Officers

SWAP will retain a record of all whistleblowing concerns and these will be shared at regular intervals with the Monitoring Officer who has overall responsibility for monitoring the policy and will report annually to the Council's Standards Committee on the operation of the policy.

Links to other Policies

The Council has agreed a Constitution, which sets out how the Council operates, how decisions are made, and the procedures to follow to ensure that these are efficient, transparent and accountable to local people. While some of these processes are required by law, others are a matter for the Council to choose. The Constitution also has a number of rules and regulations to make sure that financial, working and organisational procedures are properly controlled.

Review

The policy will be kept under review and as a result may be subject to amendment by the Whistleblowing Policy Contact Officer:

Monitoring Officer
Somerset Council