

Confidential Reporting Code (Whistleblowing)

Confidential Reporting Code

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Introduction

This Policy relates to 'Whistleblowing', which is a popular term used when someone who works in or for an organisation raises concern over a possible fraud, crime, danger or other serious risk that could threaten customers, colleagues, the public or the organisations own reputation.

Whistleblowing can alert employers to:

- a danger in the workplace
- fraud in, on or by the organisation
- offering, selling or taking of bribes
- misreporting performance data

By taking such reports seriously, Bromsgrove District Council will be able to:

- deter wrongdoing
- pick up potential problems early
- address the issue
- demonstrate that it is accountable and well managed
- create a culture of openness and honesty
- minimise costs and compensation from accidents, investigations and inspections
- maintain and build on its reputation

This Code of Confidentiality applies to all staff working for the Council, full and part time, temporary and casual and it also covers agency and contractor staff. Reference to workers within this Code covers all of these categories.

Although not covered by the Public Interest Disclosure Act 1998, Members are also encouraged to use this Code to raise concerns to ensure a consistent protocol is applied.

Workers are often the first to realise that there may be something wrong within the Council. However, they may not express their concerns or make allegations 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.

The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect workers and others that we deal with, who have serious concerns about any aspect of the Council's work to come forward and voice those concerns.

This Code makes it clear that workers can do so without fear of victimisation, subsequent discrimination or disadvantage. This Code is intended to encourage and enable workers to raise concerns or make allegations within the Council rather than

overlooking a problem or 'blowing the whistle' outside. Anyone responsible for victimising a worker who uses this Code will be subject to disciplinary action.

This Code, when applicable, also applies to suppliers and those providing services under a contract with the Council.

This Code is in addition to the Council's Code of Conduct, Local Disciplinary Procedure, Grievance Procedure, Harassment Policy, Complaints Process and other policies and procedures.

This Code has previously been discussed with the relevant trade unions and has their support.

Aims and Scope of the Code

This Code aims to:

- encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice;
- provide avenues for you to raise those concerns or make allegations and receive feedback on any action taken;
- ensure that you receive a response to your concerns or allegations and that you are aware of how to pursue them if you are not satisfied;
- reassure you that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made any disclosure in good faith.

This Code is not intended to cover concerns that can be progressed under existing Human Resource procedures. There are existing procedures in place for workers to legitimately complain about harassment, violence and aggression, discrimination and instances where they feel they have a grievance. The Confidential Reporting Code is intended to cover concerns or allegations that fall outside the scope of other procedures. These concerns or allegations include:

- conduct which is an offence or a breach of law;
- disclosures related to miscarriages of justice;
- health and safety risks, including risks to the public as well as other workers;
- damage to the working environment;
- the unauthorised use of public funds;
- misappropriation of money, materials and equipment, or other irregularities;
- possible fraud and corruption;
- sexual or physical abuse of clients; or
- other unethical conduct.

The above does not represent an exhaustive list of areas covered by this Code.

Any serious concern that you have about any aspect of service provision or the conduct of officers or Members of the Council or others acting on behalf of the Council can be reported, together with any allegations that you may wish to make, under the Code. This may be about something that:

- makes you feel uncomfortable in terms of known standards, your experience, or the standards that you believe the Council subscribes to;
- is against the Council's Financial Standing Orders, Financial Regulations, Contracts Procedure Rules or general procurement procedures;
- falls below established standards of practice; or
- amounts to improper conduct.

This Code does not replace the Corporate Complaints Procedure.

The Public Interest Disclosure Act 1998

The Public Interest Disclosure Act 1998, called the "Whistleblowers Act" provides protection for workers who disclose information that might otherwise be regarded as confidential. The Act provides that employers should not victimise any worker who blows the whistle in one of the ways set out in the legislation.

The Act makes it clear that where the nature of such a disclosure falls into one of six categories detailed below and the manner of the disclosure is one permitted by the Act; workers will have protection in law from detrimental action by the employer. The six categories are:

1. a criminal offence has been, is being, or is about to be committed;
2. the employer is failing to comply with legal obligations;
3. a miscarriage of justice has happened or is likely to happen;
4. an individual's health and safety is being jeopardised;
5. the environment is, or is likely to be damaged; or
6. information falling into one of the above categories which has been, is being or is likely to be, deliberately concealed.

A worker does not have to show that, for example, a criminal offence has been committed. He or she has to have a reasonable belief that this is the case. It will be for an employment tribunal to decide whether or not such a belief was reasonable.

The Act gives protection to workers who make disclosures to specified persons in various circumstances. Protection applies where a disclosure is made:

- to the employer or to another responsible person provided the worker acts in good faith;
- in the course of obtaining legal advice; or
- to a person or body prescribed by the Secretary of State, provided the worker acts in good faith and reasonably believes the information falls within the potentially protected categories and is substantially true.

The Act also gives protection to workers who make "external" disclosures to persons other than listed above. Workers however will only be protected under this general category if they have previously disclosed the matter to the employer or a prescribed body or have not done so because they reasonably believe they would have been victimised or evidence would have been concealed or destroyed. They must also:

- make the disclosure in good faith;

- reasonably believe that the information, and any associated allegation, are substantially true;
- not act for personal gain; and
- act reasonably.

In deciding whether a worker has acted reasonably, all the circumstances will be taken into account but in particular:

- the identity of the person to whom the disclosure is made;
- the seriousness of the relevant offence;
- whether the offence is continuing or is likely to occur in the future;
- whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person;
- any action the employer or prescribed person might reasonably be expected to take as a result of a previous disclosure; and
- whether in making the disclosure to the employer the worker complied with any procedure approved by the employer.

In disclosing “exceptionally serious” breaches, i.e. where the subject of the disclosure is sufficiently serious to disclose it to persons other than detailed in paragraph 3.3, the worker will be protected as long as:

- the disclosure is made in good faith;
- the worker believes that the information disclosed and any associated allegation are substantially true;
- the disclosure is not made for personal gain;
- the matter disclosed is of an exceptionally serious nature; and
- in all the circumstances it is reasonable for the worker to make the disclosure.

Safeguards

a) Harassment or Victimisation of Workers

The Council is committed to good practice and high standards and wants to be supportive of workers.

The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate any harassment or victimisation (including informal pressures), and will take appropriate action, including the application of the Disciplinary Procedure, to protect a worker who raises a concern or makes an allegation in good faith.

In accordance with the Public Interest Disclosure Act 1998 a worker cannot be dismissed or selected for redundancy as a result of making a disclosure. In addition an employer cannot withhold a pay rise, object to a promotion or not give training.

This does not mean that if you are already the subject of disciplinary or redundancy procedures, that those procedures will be halted as a result of Whistleblowing.

b) Confidentiality

All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish.

At appropriate times, however, you may need to come forward as a witness. If whistleblowers are required to give evidence in criminal or disciplinary proceedings, the Council will arrange for them to receive advice and support.

c) Anonymous Allegations

This Code encourages you to put your name to your allegation. Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.

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

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

d) Rights and Responsibilities of Workers

All workers are required to report any issue of concern regarding the provision of services or management of those services. In the majority of cases, this will be done through the usual line management channels.

Workers are expected to report concerns as soon they arise and avoid any unnecessary delay in doing so.

Other than raising concerns in good faith, workers are not required to 'prove' the truth of any allegation. However, a complainant will need to demonstrate that there are reasonable grounds for the concern, and will be expected to co-operate with any investigation that takes place.

When any meeting or interview is arranged, workers may, if they so wish, be accompanied by a trade union official or a workplace colleague.

e) Untrue Allegations

If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you. However, if you make malicious or vexatious allegations, disciplinary action may be taken against you.

How to Raise a Concern

As a first step, you should normally raise concerns with your immediate line manager or their superior. This depends, however, on the seriousness and sensitivity of the issues involved and who is thought to be involved in the malpractice. If you have any concerns about raising the issue with your line manager then you should initially approach:

- The Corporate Anti Fraud Team

Alternatively, you can approach:

- The Chief Executive;
- Section 151 Officer (Executive Director of Finance and Resources);
- Monitoring Officer (Head of Legal, Equality and Democratic Services);
- Internal Audit Section;

who will liaise with the Corporate Anti-Fraud Team as necessary.

Where concerns are raised with Line Management, Managers can get help or can refer such concerns to the Corporate Anti-Fraud Team. Managers should:

- listen carefully
- avoid pre-judging
- consider whether it is a Whistleblowing concern
- consider how serious and urgent the risk is
- consider whether it needs referring the Corporate Anti-Fraud Team for further investigation.
- Establish if the employee is anxious about reprisals
- Establish where the concern first arose and, where relevant, what is prompting the decision to speak up now
- Whether the information is first hand or hearsay
- Whether confidentiality is sought
- Is there anything else relevant that the employee should mention?

These issues are guidance and should not be seen as a definitive list. However the Line Manager should not investigate the concern themselves unless it can be treated as information that could improve system weaknesses or practical procedures and can be resolved easily. If this is the case, the employee should be informed.

Where confidentiality has been requested, this should be respected. Where the concern needs to be referred to the Corporate Anti-Fraud Team, this should be done without undue delay. Additionally, the employee should be asked whether he/she wants to be in direct contact with the Corporate Anti-Fraud Team or would rather that communication is done through another designated officer or the internal hotline.

Where specific enquiries need to be made in an area in which the whistleblower works, they should be forewarned so that he/she is prepared to answer questions along with everyone else.

Concerns or allegations may be raised verbally or in writing. Staff who wish to make a written report are invited to use either the form held in the Corporate Anti-Fraud Team area (within Financial Services) on the intranet or using the online referral form on the Bromsgrove District Council website (Fraud area within 'Business' tab) providing:

- the background and history of the concern (giving relevant dates); and
- the reason why you are particularly concerned about the situation.

The earlier you express the concern, the easier it is to take action.

Although you are not expected to prove the truth of your concern or allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern or allegation.

You may invite your trade union representative, professional association representative or a friend to be present during any meetings or interviews in connection with the concerns you have raised or allegations that you have made.

Workers can obtain advice and guidance on how matters of concern may be pursued from:

- The Corporate Anti-Fraud Team
- Monitoring Officer (Head of Legal and Democratic Services);
- The Human Resources and Organisational Development section.

The Council has also introduced a telephone line for workers to report concerns. There are two options for workers:

- If you want to remain anonymous when reporting a concern, use the full external number 01527 881221; or
- If you are comfortable with your identify being known, use the short internal number on extension 1221

All calls go direct to the Council's Corporate Anti-Fraud Team for action.

How the Council Will Respond

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

- be investigated internally;
- be referred to the Police;
- be referred to the Council's external auditor; or
- form the subject of an independent enquiry.

In order to protect individuals, the Council and those accused of misdeed 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 that the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures will normally be referred for consideration under those procedures.

Some concerns or allegations 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.

Once a concern or allegation has been received, the Council will write to you:

- acknowledging that the concern has been received;
- indicating how it proposes to deal with the matter;

- giving an estimate of how long it will take to provide a final response; and
- inform you whether any initial enquiries have been made and whether or not further investigations will take place.

The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the Council will seek further information from you.

Where any meeting is arranged, off-site if you so wish, you can be accompanied by a trade union or professional association representative or a friend.

The Council will take steps to minimise any difficulties that you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the Council will arrange for you to receive advice about the procedure.

The persons investigating the concerns will produce a written report that:

- outlines the concern / allegation;
- details the investigation process;
- gives the outcome of the investigation; and
- details recommendations where appropriate.

The Council accepts that the worker needs to be assured that the matter has been properly addressed. Thus, subject to legal constraints, they will be informed of the outcome of any investigation.

If the person who expressed the concern is not satisfied with the outcome then they have the right to take matters further as detailed below in Section 8.

Investigations will not discriminate or condone unacceptable behaviour, in relation to race, colour, nationality, national or ethnic origin, sexual orientation, gender, gender re-assignment, religion, age, disability, income group, marital status or geographical location.

The Responsible Officer

The Council's Monitoring Officer (Head of Legal, Equality and Democratic Services) has overall responsibility for the maintenance and operation of this Code. The Head of Legal, Equality and Democratic Services will report as necessary on the operation of the Code, but not on individual cases, to the Council's Audit Board.

How the Matter Can Be Taken Further

This Code is intended to provide you with an avenue to raise concerns within the Council and the Council hopes you will be satisfied. If you are not, and if you feel it is right to take the matter outside the Council, the list below shows possible contact points:

- The Council's External Auditor.

- Audit Commission (Public Interest Disclosure Line 0845 052 2646).
- Trade Unions;
- Professional Bodies; or
- Police.

If a worker is unsure whether or how to raise a concern or wants confidential and independent advice, contact can be made with the independent charity “Public Concern at Work”:

Public Concern at Work
Suite 301
16 Baldwins Gardens
London
EC1N 7RJ

Telephone (general enquiries and helpline): 020 7404 6609
Fax: 020 7404 6576

E-mail: helpline@pcaw.co.uk.

Their lawyers can provide free confidential advice on how to raise a concern about serious malpractice at work.

If concerns are raised through Trade Unions or Professional Bodies then it is expected that the Trade Union / Professional Body representative will act in accordance with this Code and with the Public Interest Disclosure Act 1998 with regard to the information disclosed. Such a disclosure made by a worker will not be treated as grounds for disciplinary action.

If workers do take the matter outside the Council, you should take into consideration the requirements in relation to the disclosure of confidential information as set out in this Code. Additionally, workers should be aware of the relevant Acts when reporting concerns, specifically:

- Public Interest Disclosure Act 1998.
- Human Rights Act 1998.
- Data Protection 1998.
- Fraud Act 2006
- Regulation of Investigatory Powers Act 2000 (RIPA)