

North Lanarkshire Council Report

Policy & Strategy

approval noting

Ref AA/REB

Date 27/09/19

Annual Review of Whistleblowing

From Archie Aitken, Head of Business for Legal & Democratic Solutions

Email aitkena@northlan.gov.uk

Telephone 01698 302 295

Executive Summary

The Council's Whistleblowing Procedure provides a mechanism for employees of the Council and other workers within the Council to report a concern about serious wrongdoing within the Council and to do so with security and in confidence.

The annual review of the Whistleblowing Procedure has been undertaken on the use of the Whistleblowing Procedure and on any amendments required to the Procedure.

This report presents the findings of the review for noting and approval as appropriate.

Recommendations

Committee is asked to:

1. Note the outcome of the annual review of the Whistleblowing procedure.
2. Approve the changes to the Whistleblowing Policy to reflect structural changes and the addition of information in relation to anonymity when making a protected disclosure.

The Plan for North Lanarkshire

Priority Improve North Lanarkshire's resource base

Ambition statement (23) Build a workforce for the future capable of delivering on our priorities and shared ambition

1. Background

- 1.1 The Council's Whistleblowing Procedure draws on the rights and obligations contained within the Employment Rights Act 1996, the Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013.
- 1.2 The Council's Whistleblowing Procedure provides a mechanism for employees of the Council and other workers within the Council to report a concern about serious wrongdoing within the Council and to do so with security and in confidence.
- 1.3 The Council's established procedures on Whistleblowing (also known as Public Interest Disclosures) involve the Council's Chief Officers keeping records of any disclosures made in terms of the procedures adopted by the Council.

2. Report

- 2.1 Annual reviews of the Whistleblowing Procedure commenced in 2005.

Outcome of Review

- 2.2 In 2018/2019, no whistleblowing reports have been received by the Council.
- 2.3 It is recognised that as the Whistleblowing Procedure has not been invoked to a significant extent since introduced in 2003, this could be as a result of either a lack of knowledge or awareness of the procedure among employees, or a fear of reprisals for raising a protected disclosure. However, this may actually be on account of a lack of issues that require to be dealt with under the procedure.
- 2.4 To ensure employee awareness, the Procedure remains available on Connect NL. Work has been done by Corporate Communications to highlight the procedure by Corporate Communications on Connect NL by including the procedure on the home page banner. The Trade Unions and Employee Equality Forum have been consulted with in relation to the proposed changes to the Procedure, again raising awareness of it. No amendments have been proposed by them.
- 2.5 The principles of the Whistleblowing Procedure for reporting concerns at work remain:
 - fair and reasonable treatment at work;
 - the right to report concerns reasonably believed to be in the public interest;
 - confidentiality;
 - openness and accountability; and
 - honesty and integrity.
- 2.6 In light of the principles of the Whistleblowing Procedure, it is considered that the process sufficiently robust that employees should be confident that any issues raised by them will be taken seriously, that there is value in bringing matters to the attention of the Council and that no recriminations will arise from a Public Interest Disclosure being made

Changes to the Procedure

- 2.7 The Procedure is set out at Appendix A and the proposed changes have been marked in *italics*.
- 2.8 Section 2.3 of the Procedure has been updated to take into account structural changes and confirms that the officers with advisory roles in respect of assisting the individuals with regard to the procedure are the Council's Head of Legal and Democratic Solutions, Head of Financial Solutions and Head of People and Organisational Development.
- 2.9 Section 3 of the Procedure has been updated to include a reference to anonymity.
- 2.10 Section 7.1 has been updated to reflect the name change of the independent charity to Protect.
- 2.11 The details of officers to whom protected disclosures may be reported at Annex 1 have been updated to take into account the structural changes.
- 2.12 The proposed changes in relation to structural changes and anonymity were the subject of consultation with the Trade Unions and the Employee Equality Forum. There has been no disagreement or comment on the changes proposed.

3. Equality and Diversity

3.1 Fairer Scotland Duty

There is no direct impact as a result of this report.

3.2 Equality Impact Assessment

There is no direct impact as a result of this report.

4. Implications

4.1 Financial Impact

There are no implications of this nature arising from this report.

4.2 HR/Policy/Legislative Impact

The Whistleblowing Procedure will remain under review and updated where required in line with any legislative amendments and with best practice.

4.3 Environmental Impact

There are no implications of this nature arising from this report.

4.4 Risk Impact

There is no direct impact as a result of this report.

5. Measures of success

Ongoing review of the application of the Whistleblowing Procedure will ensure that the Council's resources and reputation are being safeguarded and that the Council's good governance standards are being maintained

6. Supporting documents

6.1 Public Interests Disclosure "Whistleblowing" Procedure

A handwritten signature in black ink, appearing to be 'C. C. C.', written in a cursive style.

Head of Business for Legal and Democratic Solutions

Public Interest Disclosures

“Whistleblowing”

| | | | |
|---------------|----------------------|----------------|--------------------------------|
| Author | <i>Archie Aitken</i> | Contact | <i>aitkena@northlan.gov.uk</i> |
| Owner | <i>Archie Aitken</i> | details | <i>aitkena@northlan.gov.uk</i> |

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|-------------|---------------|-----------------------|--|------------------------|-------|
| Date | 24 April 2019 | Version number | | Document status | Draft |
|-------------|---------------|-----------------------|--|------------------------|-------|

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| Governance Committee | <i>Policy & Strategy</i> | Date approved | |
| Review date | <i>April 2020</i> | | |

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| Strategic Alignment |
| <i>Improving the Council’s Resouce Base – A Workforce Strategy that is built around the needs of he Council (as a single resource base) to deliver the priority outcomes, ensuring future workforce requirements, new skills and innovative approaches and succession planning are recognised.</i> |

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| Consultation process | <i>Consultation with stakeholders carried out April – May 2019</i> | |
| Stakeholders | Contacts identified for each service | |
| | <i>Joint Trade Unions</i> | |
| Stakeholders | <i>JNC for Teaching Staff</i> | |
| | | |
| Distribution | | |

Change record

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|--------------------|---|---------------|---------------------|
| Date | <i>24 April 2019</i> | Author | <i>Rachel Blair</i> |
| Change made | <i>Updated to reflect structural changes and addition of information in relation to anonymity when making a protected disclosure.</i> | | |

Preamble

The purpose of this procedure is to provide a mechanism for employees of the Council and to other workers within the Council to report to the Council a concern which he or she has that there is serious wrongdoing within the Council – and to do so with both security and confidence. It draws on the rights and obligations contained within the Employment Rights Act 1996, the Public Interest Disclosure Act 1998, and the Enterprise and Regulatory Reform Act 2013.

This procedure for reporting concerns at work is based on the following principles:

- fair and reasonable treatment at work;
- the right to report concerns reasonably believed to be in the public interest;
- confidentiality;
- openness and accountability, and
- honesty and integrity.

1. Introduction

1.1 In the course of your employment you may become aware of serious wrongdoing in the Council or you may have information regarding malpractice. This procedure outlines the steps you should take to bring serious situations to the attention of the Council, and has been designed to provide guidance to employees on reporting incidents of malpractice or wrongdoing. It indicates how matters can be expedited thoroughly, discreetly and, so far as possible, in a confidential way if that is necessary. This procedure outlines:-

- what sort of concerns may be reported;
- the employees covered by this procedure;
- the nominated individuals in the Council who can be contacted regarding your concerns;
- the appropriate steps to be taken to report serious wrongdoing or malpractice;
- how a matter may be raised in confidence when that is appropriate;
- the rights of employees who are the subject of disclosures;
- any obligations placed on an employee in terms of bearing witness;
- the interest of the Council;
- the right to raise matters of concern and not be subject to any detriment, and
- the protection which is available to an employee.

1.2 The disclosure of information in the public interest involves the reporting of serious concerns about illegal conduct or behaviour which could be described as serious malpractice in the workplace. The kinds of concerns are those set out at paragraph 2.2 of this procedure.

- 1.3. The principles and guidance outlined in this procedure have been developed against the background of the Council's wish to encourage high standards of conduct in the workplace and to develop the statutory protections available to employees.
- 1.4. Any employee who has a concern over what they consider is serious wrongdoing within the Council may wish to seek support and advice from their trade union which may be in a position to assist the employee in preparing and making a disclosure report under this procedure.
- 1.5. The title given to this procedure is Public Interest Disclosures. It may also be referred to as the "Whistleblowing" Procedure.

2. Reporting Concerns

- 2.1. Most personal concerns at work can be adequately dealt with using other procedures or mechanisms. For instance, if there is an issue about your working conditions which you cannot resolve through other means, you may wish to use the Council's Grievance Procedure. The procedure outlined in this document is designed to deal with issues of illegality or serious malpractice.
- 2.2. The public has a right to expect high standards of service. However, there may be occasions when, due to individual acts, omissions or failings, it may be necessary to bring certain matters which give cause for serious concern to the attention of your employer. If you are concerned about an aspect of individual behaviour or Council practice it may fall under one (or more) of the following categories:
 - a criminal offence;
 - a failure to comply with a legal obligation;
 - a miscarriage of justice;
 - danger to the health and safety of an individual;
 - damage to the environment, and
 - the deliberate concealment of information tending to show any of the matters above is being deliberately concealed.
- 2.3. Under the terms of this procedure an employee can report a matter which they reasonably believe to be in the public interest, on a confidential basis to their employer regarding any of these six categories. The categories are by no means mutually exclusive. For instance, you may be aware of a health and safety failure that is also a criminal offence. If you are not sure whether the concern you wish to raise falls into one of the above categories then you may contact one of several Council Officers who will try to assist you in identifying whether the concern which you have falls under one or more of these categories or whether your concern should be better dealt with under a different procedure or route. The officers available to advise on this are the Council's *Head of Legal and Democratic Solutions, Head of Financial Solutions and Head of People and Organisational Development.*

- 2.4 An employee may also be a resident in the Council's area or have other good reason to approach a local councillor. Such an employee is free to raise an issue with his or her councillor. However, advising a local councillor of a concern over serious wrongdoing is not a substitute for advising the Council formally by following the Disclosure Report Procedure set out in Section 4. The onus rests on the employee to make the Public Interest Disclosure by following the defined reporting procedure. This will ensure that the Council deals with the matter formally, and in terms of both the legislation and this Procedure.

3. Confidentiality and Anonymity

- 3.1. One of the principles of this procedure is that an employee has the right to report a matter they consider to be in the public interest and the report will be treated on a confidential basis. For the reporting process to have credibility, employees must have confidence that any matter they draw to the attention of their employer will be handled with discretion and tact.
- 3.2. *The Council hopes that all staff will be able to voice whistleblowing concerns openly under this policy. If an employee wishes to raise their concern confidentially, the Council will make every effort to ensure the employee's identity is kept a secret. If it is necessary for anyone investigating the employee's concern to know their identity, this will be discussed with the employee.*
- 3.3. *The Council does not encourage staff to make disclosures anonymously. Proper investigations may be more difficult or impossible if the Council cannot obtain further information. It is also more difficult to establish whether any allegations are credible. Whistleblowers who are concerned about possible reprisals if their identity is revealed should come forward to the officers identified at 2.3 and appropriate measures can then be taken to preserve confidentiality.*
- 3.4. Once an employee has made a report he/she will be updated as soon as practicable on the Council's response and any action that may be taken.
- 3.5. It has to be recognised, however, that in some cases it may not always be possible to preserve total confidentiality, for instance, if the matter reported has to involve agencies such as the police or the Health and Safety Executive. If, in such a situation, the Council can no longer preserve total confidentiality, the employee will be advised of that fact.

4. Reporting Procedure

- 4.1. An employee wishing to report a matter that is covered by the categories covered in this procedure should contact the appropriate designated officer in the employing Service in the Council. The designated officers are those identified in Annex 1 to this document. This report should, preferably, be in writing and in order to avoid any doubt, should be described as a "Public Interest Disclosure".

- 4.2 This procedure requires that disclosure reports should be made to the Executive Director of the employing Service. Executive Directors are required to be alert to such disclosures and ensure that, as far as it is possible, the confidentiality of such reports is maintained. This will normally involve the report having the personal attention of the Executive Director.
- 4.3 If a disclosure report is made which alleges wrongdoing by a Council Chief Officer (an Executive Director or Head of Service) that report should be made directly to the Chief Executive.
- 4.4 Once a report has been submitted the appropriate officer will advise you of the next steps and any expected timescale. This will be done within 5 working days.
- 4.5 At this stage of the process it is important that confidentiality is maintained by both parties where that is required to ensure that the matter can be dealt with in the appropriate way, avoid prejudice and protect individual rights.
- 4.6 The report will then be considered and a decision taken as to whether, and in what way, the matter should proceed.
- 4.7 Should the appropriate officer decide not to take any action you will be notified and given the reason(s) for this decision.
- 4.8 If the appropriate officer decides that further action is required on the basis of your report, then you will be notified of the decision, subject to the appropriate investigation and the likely timescale, if possible to do so.
- 4.9 Once the matter has been concluded and the appropriate action taken in response to your report, you will be notified of the outcome. However, sometimes the need for confidentiality may prevent the Council from giving you specific details of any disciplinary action taken as a result.
- 4.10 Under the terms of this procedure, you may seek a progress update from the appropriate officer regarding the status of your report, although it has to be understood that the response may have to be qualified in order to protect other interests.
- 4.11 While the Council cannot guarantee, the outcome you are seeking, the Council will try to deal with your concern fairly and in an appropriate way. By using this procedure, you can help the Council achieve this.
- 4.12 If you are not satisfied with the way your report has been dealt with, you can raise this with the Chief Executive.

5. Safeguards

- 5.1 Under the terms of this procedure, any employee making a Public Interest Disclosure report is safeguarded against any detriment in the course of their employment, provided that the report is made in the reasonable belief that it is in the public interest.

- 5.2 For the purpose of this procedure, detriment is defined as any act or omission that penalises the employee for submitting the report. For example, dismissal, harassment, victimisation or any other form of punitive sanction which would not have arisen were it not for the report having been made are prohibited under the terms of this procedure. If you believe that you have been subjected to a detriment, you should immediately report that to the Executive Director of the employing Service who received your disclosure report. If the matter is not remedied, you should raise it formally through the Council's Dignity at Work procedure.
- 5.3 An employee must not threaten or retaliate against another employee making a Public Interest Disclosure Report. Any employee involved in such conduct, may be subject to the Councils' disciplinary procedure. In addition, if an employee is subjected to such detriment by another employee then that other employee could be personally liable.

6. Wrong Reports

- 6.1 There may be instances when a report is submitted, based on a genuine belief by the employee that something is wrong at a particular time, which is subsequently demonstrated to be false or inaccurate. In such circumstances, employees will be informed of the discrepancy between their report and the facts at hand. Provided that the Council is satisfied that the employee acted in good faith and had a genuine belief that such a situation should be reported and no personal gain was involved, no further action will be taken against the reporting employee.
- 6.2 If an employee has deliberately submitted a report that they know to be not true or unfounded or with a view to personal gain then they may be subject to the Council's disciplinary procedure.

7. Reporting Outwith the Council

- 7.1 The principal aim of this procedure is to provide a mechanism whereby an employee can be assured of protection if the employee discloses serious wrongdoing. In most circumstances it is expected that the internal mechanisms outlined in this procedure will be used and with confidence. If however there is genuine cause to believe that an internal disclosure to one of the identified officers would not be appropriate for particular reasons, it is accepted that a disclosure to an external regulator may be protected. Examples of such regulators will include Audit Scotland, The Care Commission, the Health & Safety Executive and the Scottish Public Services Ombudsman. The independent charity *Protect* (<https://protect-advice.org.uk/>) has a list of prescribed regulators for reporting certain types of concern.
- 7.2 In very particular circumstances a wider disclosure such as to the media, MSPs or MPs may be protected but only if they are reasonable in all the circumstances and they are not made for personal gain. The Council would strongly encourage an employee to seek legal advice before reporting a concern to anyone external. If however an employee is to be protected against the consequences of such a wider disclosure it must be established that:-

- (a) the employee reasonably believed he or she would be victimised if they had raised the matter internally or with an external regulator;
- (b) if there was no appropriate external regulator, and the employee reasonably believed that evidence was likely to be concealed or destroyed;
or
- (c) the concern had already been raised with the employer or an appropriate external regulator and no action had been taken.

CHIEF OFFICERS TO WHOM PUBLIC INTEREST DISCLOSURES MAY BE REPORTED

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WHISTLEBLOWING PROCEDURE

- | | |
|---|------------------------|
| 1. Chief Executive | <i>Des Murray</i> |
| 2. Executive Director of Enterprise and Communities | <i>Robert Steenson</i> |
| 3. Executive Director of Education and Families | <i>Derek Brown</i> |
| 4. Chief Accountable Officer Health and Social Care | <i>Ross McGuffie</i> |