

MANSFIELD DISTRICT COUNCIL

WHISTLEBLOWING CODE

1 INTRODUCTION

- 1.1 This Code applies to all employees working for the Council, full and part time, temporary and casual.
- 1.2 Agency workers, contractors, suppliers and Elected Members are also encouraged to use this Code to raise concerns to ensure a consistent protocol is applied.
- 1.3 Employees are often the first to realise that there may be something seriously wrong within the Council. Whistleblowing is viewed by the Council as a positive act that can make a valuable contribution to the Council's efficiency and long term success. It is not disloyal to colleagues or the Council to speak up.
- 1.4 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we expect employees 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.
- 1.5 This Code makes it clear that you can do so without fear of victimisation, subsequent discrimination or disadvantage. This Code is intended to encourage and enable employees to raise serious concerns or make allegations within the Council rather than overlooking a problem or 'blowing the whistle' outside.
- 1.6 If you are considering raising a concern you should read this Code first. It explains:
 - The type of issues that can be raised
 - How the person raising a concern will be protected from victimisation and harassment
 - How to raise a concern
 - What the Council will do
- 1.7 if you are unsure whether to use this Code or want independent advice at any stage, you may contact the independent charity Public Concern at Work on 020 7404 6609. Their advisers can give you free confidential advice on how to raise a concern about serious malpractice at work.

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

2. The Public Interest Disclosure Act

- 2.1 The Public Interest Disclosure Act 1998, called the “Whistleblowers Act” provides protection for employees who disclose information that might otherwise be regarded as confidential. 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; employees 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
6. information falling into one of the above categories which has been, is being or is likely to be, deliberately concealed

- 2.2 An employee 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.

- 2.3 The Act gives protection to employees 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 employee acts in good faith
- in the course of obtaining legal advice
- to a person or body prescribed by the Secretary of State, provided the employee acts in good faith and reasonably believes the information falls within the potentially protected categories and is substantially true

- 2.4 The Act also gives protection to employees who make “external” disclosures to persons other than listed above. Employees 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
- act reasonably

2.5 In deciding whether an employee 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
- whether in making the disclosure to the employer the employee complied with any procedure approved by the employer

2.6 In disclosing “exceptionally serious” breaches, ie where the subject of the disclosure is sufficiently serious to disclose it to persons other than detailed in paragraph 2.3, the employee will be protected as long as:-

- the disclosure is made in good faith
- the employee 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
- in all the circumstances it is reasonable for the employee to make the disclosure

3 **AIMS AND SCOPE OF THIS CODE**

3.1 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;
- re-assure 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.

- 3.2 This Code is intended to enable an employee who becomes aware of wrongdoing in the Council which affects some other person or service to report their concerns at the earliest opportunity so that they can be properly investigated.
- 3.3 The Code is not intended to replace existing procedures:
- if your concern relates to your own treatment as an employee, you should raise it under the existing grievance procedures
 - If a client has a concern about services provided it should be raised in accordance with the Council's Complaints procedure
 - Complaints of misconduct by Elected Members are dealt with under a separate procedure and the Director of Governance (Monitoring Officer) should be contacted directly
- 3.4 Any serious concerns that you have about any aspect of service provision or conduct 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; or
 - is against the Council's Constitution and policies; or
 - falls below established standards of practice; or
 - amounts to improper conduct.

These might relate to

- conduct which is an offence or a breach of law
- disclosures related to miscarriages of justice
- significant risks to the Council's assets, including risks to the public as well as other employees
- damage to the working environment
- the unauthorised use of public funds
- misappropriation of money, materials and equipment, or other irregularities
- possible fraud and corruption
- neglect or abuse of clients, or
- other unethical conduct.

4 SAFEGUARDS

Harassment or Victimisation of Employees

- 4.1 The Council is committed to good practice and high standards and wants to be supportive of employees.
- 4.2 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 Policy, to protect an employee who raises a concern or makes an allegation in good faith.
- 4.3 Throughout this process:
- you will be given full support from senior management
 - your concerns will be taken seriously and
 - the Council will do all it can to help you throughout the investigation
- 4.4 In accordance with the Public Interest Disclosure Act an employee 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.
- 4.5 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.

Confidentiality

- 4.6 All concerns will be treated in confidence and every effort will be made not to reveal your identity if you so wish. At appropriate time, however, you may be asked to come forward as a witness if disciplinary or other proceedings follow the investigation. If you agree to this, you will be offered advice and support.

Anonymous Allegations

- 4.7 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.
- 4.8 In exercising this discretion the factors to be taken into account would include:-
- the seriousness of the issues raised
 - the credibility of the concern or allegation; and

- the likelihood of confirming them from attributable sources.

Untrue Allegations

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

5 HOW TO RAISE A CONCERN

- 5.1 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 approach one of the following:-

Director of Governance (Monitoring Officer) - Ext 3075

Chief Executive – Ext 3036

Audit and Information Assurance Manager – Ext 3017

Public Concern at Work on 020 7404 6609

This does not preclude you from raising the concern with a prescribed body as stated in Section 2 of this Code.

- 5.2 Concerns or allegations may be raised verbally or in writing or by using the online reporting form. Employees who wish to make a written report are invited to use the following format:-
- the background and history of the concern (giving relevant dates);
 - the reason why you are particularly concerned about the situation.
- 5.3 The earlier you express the concern, the easier it is to take action.
- 5.4 Although you are not expected to prove the truth of your concern or allegation, you will need to demonstrate to the person contacted that you have a genuine concern related to suspected wrongdoing or malpractice within the Council and that there are reasonable grounds for your concern or allegation.

- 5.5 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.

6 HOW THE COUNCIL WILL RESPOND

- 6.1 All matters raised will be logged upon receipt by the Audit and Information Assurance Manager, and the Director of Governance will decide how to proceed.
- 6.2 The action taken by the Council will depend on the nature of the concern. The matters raised may:
- be investigated internally by management or Internal Audit
 - be referred to the Police
 - be referred to the External Auditor
 - form the subject of an independent inquiry
- 6.3 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 eg Safeguarding, child protection or discrimination issues will normally be referred for consideration under those procedures.
- 6.4 Some concerns or allegations may be resolved by agreed action without the need for investigation.
- 6.5 Within ten working days of a concern being 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 the frequency of progress updates
 - telling you whether any initial enquiries have been made and telling you whether further investigations will take place and if not, why not
 - supply you with information about employee support mechanisms
- 6.6 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.

- 6.7 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.
- 6.8 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.
- 6.9 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
 - details recommendations where appropriate
- 6.10 The Council accepts that the employee 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.
- 6.11 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.

7 THE RESPONSIBLE OFFICER

- 7.1 The Director of Governance as the Council's Monitoring Officer has overall responsibility for the maintenance and operation of this Code, and will present an annual report to the Council's Corporate Leadership Team and the Audit Committee. The report will include a summary of the concerns raised and any lessons learned.

8 HOW THE MATTER CAN BE TAKEN FURTHER

- 8.1 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:-
- External Audit (Tel: 0121 232 3221)
 - Trade Unions or Professional Bodies
 - Health & Safety Executive
 - Police
- 8.2 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 policy and with the Act with regard to the information disclosed. Such a disclosure made by an employee will not be treated as grounds for disciplinary action.

- 8.3 If you 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.