

Whistleblowing Policy

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1. INTRODUCTION

- 1.1 Calderdale Council (the Council) is committed to ensuring that it, and the people working for it, complies with the highest standards of openness, probity and accountability. In line with that commitment, it expects and encourages all employees to maintain high standards in accordance with the Code of Conduct for Council Employees. This Policy aims to encourage workers with serious concerns about any aspect of the Council's work to come forward and voice those concerns, so that they can be investigated effectively.
- 1.2 'Whistleblowing' is the term used in respect of workers disclosing information in the public interest and has a specific legal definition under the Public Interest Disclosure Act 1998, ie a disclosure of information which, in the reasonable belief of the worker, is made in the public interest and tends to show serious misconduct ('a Protected Disclosure'). The term 'worker' includes an employee of the Council, agency staff, contractor or consultant doing work for the Council and such workers are referred to as "employees" in this policy.
- 1.3 This policy document covers disclosures of serious misconduct or wrongdoing made by employees, and to this end, where this policy makes reference to a 'whistleblower' it refers to the Calderdale Council employee who is making a disclosure. The Policy applies to all employees working at all levels of the organisation including school based staff employed in community schools, community special schools, voluntary controlled schools and maintained nursery schools, agency staff, contractors and volunteers. It is the responsibility of the Governing Board to ensure that the Whistleblowing Policy has been adopted by the school and that all staff are aware of it and can access it easily.
- 1.4 This policy seeks to set out how the Council will handle and respond to any such disclosure.

Where any employee is aware of any serious misconduct or wrongdoing, for example:

- breach of a legal obligation;
- any criminal activity, including incitement to commit a criminal act;
- corruption or fraud;
- a miscarriage of justice;
- a danger to the health or safety of any individual or damage to the environment;
- abuse of power or authority;
- failure to comply with professional standards, Council policies or codes of practice/ conduct.

Committed by or related to the actions of:

- Calderdale Council employees;
- Councillors;
- contractors, agency staff, suppliers or consultants of the Council in the course of their work for the Council;

and reports it, the Council will investigate any such allegations and, where appropriate, take action. The Council is also committed to preventing any employee who makes a disclosure being subjected to any detriment (eg harassment, victimisation or unfair treatment) of any person arising from their whistleblowing, and where appropriate, will take disciplinary action against any member of staff responsible for such harassment, victimisation or unfair treatment against a whistleblower.

1.5 This policy seeks to:

- a) provide guidance on how to raise concerns;
- b) encourage employees and/or their representatives to feel confident in raising concerns in the public interest about suspected serious misconduct in the Council and its services without fear of reprisals or victimisation even where the concerns are not subsequently confirmed by the investigation;
- c) give a clear message that disclosures of serious misconduct or impropriety are taken seriously;
- d) ensure that where the disclosure proves to be well founded, the individuals responsible for such serious misconduct or wrongdoing will be held accountable for their actions;
- e) set out what employees can expect by way of confidentiality and protection when making a whistleblowing disclosure; and
- f) identify independent support for employees who wish to make a whistleblowing disclosure.

1.6 This policy is not designed to be used:

- a) for raising or reconsideration of matters that come under existing internal Calderdale Council procedures, eg Grievance, Disciplinary, Capability, Dignity at Work etc; or
- b) for allegations that fall within the scope of specific procedures (for example child or adult at risk safeguarding) which will normally be referred for consideration under the relevant procedure, unless the employee has good reason to believe that the procedure is not being followed or will not be followed effectively; or
- c) as an appeal process from any complaint or grievance handled under any of the above procedures.

1.7 Where a complaint is made by an employee which does not fall within the scope of this policy the Council will advise the employee of this and will discuss how they may take their complaint further. Wherever possible, the Council will consider the views of the employee, but there are situations where the Council is legally required to pass on details of allegations, without the consent of the employee, for example in safeguarding matters, or where the allegations relate to serious criminal activity undertaken by individuals outside the Council.

2. THE PUBLIC INTEREST DISCLOSURE ACT 1998 (“PIDA”)

2.1 PIDA is designed to encourage and enable employees (which includes Agency Staff and any other individual working for the Council or school supported by the Council) to raise any concerns about any suspected serious misconduct, wrongdoing, an illegal act or a dangerous situation within the organisation.

2.2 This is called making a “Protected Disclosure” under the Act, and when it is made in the public interest and in accordance with this policy, an employee is legally protected from dismissal or detriment as a result of the disclosure.

2.3 The person making the disclosure does not have to be directly or personally affected by the serious misconduct or wrongdoing, but to be protected, they must have a reasonable belief that the disclosure is made in the public interest and raise a concern that:

- a) a criminal offence (eg fraud, corruption or theft) has been/is likely to be committed;
- b) a person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject;
- c) a miscarriage of justice has been/is likely to occur;
- d) the health or safety of any individual has been/is likely to be endangered;
- e) the environment has been/is likely to be damaged;
- f) information relating to any of the above is being deliberately concealed or attempts are being made to conceal the same;
- g) public funds are being used in an unauthorised manner;
- h) the Council’s Constitution (including Standing Orders, Financial Regulations etc) has not been observed or is being breached by a Councillor(s) and/or a Council Officer(s);
- i) sexual or physical abuse by any member of staff on a service user is taking place;
- j) unlawful discrimination is occurring to any member of staff or service recipient in relation to the legally protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation; and

Employees may also wish to make disclosures about breaches of the ‘Nolan Principles of Conduct Underpinning Public Life’ (see Appendix 1)

- 2.4 PIDA will protect any employee or worker making a Protected Disclosure, irrespective of whether or not the disclosure relates to information gained in the course of their employment (eg a protected disclosure made by an employee acting as a service user would still fall under the PIDA protection).
- 2.5 If an Employee does not feel comfortable making a disclosure to the Council, he/she may be entitled to make a disclosure to other prescribed persons. For further Information please see paragraph 7.5 of this document.

3. EMPLOYEES WORKING IN SCHOOLS

- 3.1 It is expected that individuals employed in schools falling under the Council's whistleblowing scheme (Community Schools, Community Special Schools, Pupil Referral Units, Voluntary Controlled Schools and Maintained Nursery Schools) raise their concerns with the school.
- 3.2 Employees in schools are expected to use appropriate school procedures where appropriate.
- 3.3 Where the Employee working in a school considers one or more incidents amount to a safeguarding incident, they should report the matter under the Schools Safeguarding policy.
- 3.4 However, if the employee has good reason to believe that:
- a) whistleblowing will not be managed properly within the school, or
 - b) that he/she will be exposed to victimisation as a result of the complaint; or
 - c) the concern is about another school or another service provided by the Council;

then the employee may make the complaint directly to the Council. Employees who make a complaint to the Council about the school in which they work should set out why they feel unable to make the complaint directly to the school. For further details please see section 7 "How to make a disclosure".

- 3.5 This Policy requires the Head Teacher or Chair of Governors in a community, community special, voluntary controlled or maintained nursery school to respond to a disclosure in the same way as the Council would respond. The Head Teacher or Chair of Governors, as the case may be, must seek advice as necessary from the Council.
- 3.6 The Council reserves the right to intervene in any whistleblowing case within Community Schools, Community Special Schools, Pupil Referral Units, Voluntary Controlled Schools and Maintained Nursery Schools.

4. FOUNDATION AND VOLUNTARY-AIDED SCHOOLS

- 4.1 In Foundation and Voluntary-Aided schools that are also maintained (ie funded) by the Council, the governing board, not the Council, is the employer. It is therefore the responsibility of the governing board to adopt a whistleblowing policy. The Council recommends its own policy to the governing boards of Foundation and Voluntary-Aided schools.
- 4.2 In a Foundation or Voluntary-Aided school, it is for the governing board to decide how, within its policy, employees and workers may make a qualifying disclosure which they do not feel able to share with the Head Teacher or Chair of Governors. For example, a church school may wish to have discussions with the appropriate diocesan authority.
- 4.3 The Council will acknowledge concerns in respect of Foundation or Voluntary-Aided schools and deal with those concerns having regard to any legal obligations on the school. However, the Council's ability to investigate disclosures of serious misconduct made against a Foundation or Voluntary-Aided school is considerably less than in the case of disclosures made against schools falling under the Council's whistleblowing scheme, and as such, the Council has limited legal powers to investigate a disclosure made in respect of Foundation and/or Voluntary-Aided schools (except for certain types of allegation, including Safeguarding, Special Educational Needs and/or financial mismanagement allegations).

5. ACADEMIES, SIXTH FORM COLLEGES, FURTHER EDUCATION ESTABLISHMENTS AND FREE SCHOOLS

- 5.1 Although the Council does not maintain academies, sixth form colleges or free schools and although these institutions need to adopt their own procedures, the Council will acknowledge any concerns disclosed to it by employees of these organisations. However, if those concerns relate to the functions of the Council they may be dealt with under this policy.
- 5.2 The Council has no legal powers to investigate a disclosure made in respect of academies, sixth form colleges or free schools (except for disclosures made in respect of safeguarding issues and Special Educational Needs), and upon receipt of such concerns, the Council will contact the whistleblower to discuss whether or not to refer the disclosure to the Education Funding Agency, (the Government Agency that has oversight of academy, sixth form colleges, further education establishments and free schools), and to whom complaints/whistleblowing disclosures in respect of academies, sixth form colleges, further education establishments and free schools should be made. However, the Council may provide information about the disclosure, without revealing the identity of the whistleblower, without the whistleblower's consent, where the allegations raised are sufficiently serious enough to warrant it.
- 5.3 In respect of disclosures of serious misconduct or wrongdoing relating to safeguarding children or adults at risk, and/or Special Educational Needs the Council has a legal obligation to investigate, and will do so, irrespective of the status of the school.
- 5.4 The Council will work with the Education Funding Agency and the Department for Education to review the outcome of any complaint referred to them.

6. ADVICE FOR THOSE WISHING TO RAISE A CONCERN OR MAKE A DISCLOSURE

- 6.1 Employees who have major concerns arising from their employment may wish to seek advice from their Trade Union or the charity Public Concern at Work (0207 404 6609 <http://www.pcaw.org.uk>), to see whether the information which they wish to report would meet the definition of a 'qualifying disclosure' and whether they should be using this procedure, or some other procedure.

7. HOW TO MAKE A DISCLOSURE

- 7.1 An employee who wishes to report any suspected serious misconduct or wrongdoing ("a disclosure") to the Council should contact the Council either by:

e-mail to: whistleblowing@calderdale.gov.uk

or

post to:

Whistleblowing
c/o Head of Democratic and Partnership Services
Calderdale Council
Northgate House
Halifax
HX1 1UN

or

telephone: 01422 393568 (the whistleblowing hotline) setting out the following information:

- Name
- Contact details
- Who has committed the alleged serious misconduct/wrongdoing?
- What is the nature of the alleged serious misconduct/wrongdoing?
- Is the person making a disclosure employed by the Council?
- If not, does the person work in a school (if so which one)?

- 7.2 A disclosure form is available if employees wish to use it (see Appendix 2). If employees do not feel able to put their concern in writing, it is possible to telephone or meet an officer. By completing this form, all relevant and appropriate details will have been provided.
- 7.3 It is expected that individuals employed in schools will raise their concerns directly with the school.
- 7.4 Council employees are also entitled to make a Protected Disclosure through their manager, if they feel confident in approaching their manager to report a concern or allegation of serious misconduct or wrongdoing that falls under this policy.

- 7.5 In the event that an employee does not feel comfortable in making a disclosure to the Council, they are entitled to also make a Protected Disclosure to a number of other organisations. For further information as to whom, other than the Council, a protected disclosure can be made, see:

[The public interest disclosure \(prescribed persons\)](#)

8. HOW THE COUNCIL WILL RESPOND TO A DISCLOSURE

- 8.1 The Council will acknowledge receipt of a disclosure, as soon as possible and within 5 working days.
- 8.2 The Council will then consider and decide whether the disclosure falls under the whistleblowing criteria and, if not, will, consider how the disclosure may be investigated using the appropriate Council procedure(s). The Council's decision will be given to the person making the disclosure, wherever possible, as soon as possible after receipt of disclosure, and no later than 10 working days after acknowledging receipt of the disclosure.
- 8.3 The decision letter should state who will be handling the disclosure, how that person can be contacted, what action is likely to be taken. A further letter, summarising progress to date, should be sent within another 10 working days, and if the matter has not been resolved at that time the letter should include an estimate of how long it is likely to be before a full response can be provided.
- 8.4 However, there are situations where the Council is legally required to investigate, under separate procedures, without the consent of the whistleblower, such as investigating allegations of ill-treatment or abuse of children or adults at risk (safeguarding). In these circumstances, the Council will, wherever possible, advise the whistleblower that the disclosure will be investigated under another process, but there may be situations where it is not appropriate to disclose the existence of these investigations.
- 8.5 When the disclosure is considered to come under the Whistleblowing Policy, and the Council has assigned an investigator, he/she will contact the whistleblower, within a further 10 working days, to advise them of the following:
- a) the arrangements for confidentiality;
 - b) how the person making the disclosure will be expected to contribute to the investigation;
 - c) the outcome of any discussions which may have taken place over anonymity;
 - d) an estimate of how long the investigation is likely to take;
 - e) the name of the investigator appointed to undertake the investigation;
 - f) whistleblower, may be supported by a recognised trade union or work colleague at any meeting
- 8.6 The Council, wherever possible, will seek to advise the whistleblower of the outcome of the investigation. However, the Council is bound by the Data Protection Act and the Human Rights Act in respect of allegations relating to individuals, and may not be able to disclose information where legal proceedings are pending.

- 8.7 The use of this whistleblowing process does not automatically amount to acceptance by the Council that the information provided is necessarily a qualifying disclosure.
- 8.8 For monitoring purposes the Council keeps a list of communications received from people using the whistleblowing process. This information is used for monitoring purposes and to detect if there are areas where there is a high incidence of alleged serious misconduct or wrongdoing.

9. CONFIDENTIALITY, ANONYMITY & DATA PROTECTION

- 9.1 Although the PIDA does not refer to the confidentiality of concerns raised in a qualifying disclosure, there is an assumption that such a disclosure will be treated in confidence as a means of preventing victimisation. The Council will seek where possible to avoid disclosing information identifying any whistleblower. However, there are situations where, due to the circumstances of the alleged serious misconduct or wrongdoing, it is impossible to avoid disclosing information which may identify the whistleblower. In these circumstances, the Council will consult where possible with the whistleblower prior to the disclosure taking place and offer any appropriate support.
- 9.2 When an individual makes a disclosure the Council will process any personal data in line with the Data Protection Policy. Data collected from the point that the individual makes the disclosure is held securely and accessed by, and disclosed to individuals only for the purposes of dealing with the disclosure.
- 9.3 There may also be situations where the Council may be obliged to disclose information, for example where there are legal proceedings following on from the investigation. This may require the disclosure of witness statements or correspondence, and there is even the possibility that the whistleblower may be expected to give evidence at any hearing. In these circumstances, the Council will discuss the implications for the whistleblower if he or she proceeds with the disclosure, and where appropriate, discuss support arrangements.
- 9.4 The Council may also be required to disclose the identity of the whistleblower to third parties, where necessary for the purposes of undertaking investigations, eg where the allegations relate to serious criminal offences where the Police should investigate.
- 9.5 Anonymous complaints will be considered, however, depending on the information given and the evidence available, there may not be enough information for a proper investigation without the investigator being able to contact the whistleblower for further information and, in these circumstances, there may not be sufficient evidence to pursue an investigation.
- 9.6 The Council, as a public authority, is subject to the Freedom of Information Act. This means that there is a presumption that the Council discloses any information it holds, unless that information falls under one or more exemptions and, in most cases, that the application of that exemption is in the public interest.

- 9.7 The Freedom of Information Act contains exemptions that may be applicable to permit the withholding of information identifying the whistleblower, including:
- s.40 Personal Data.
 - s.41 Information which, if disclosed, would give rise to an actionable breach of confidence.
- 9.8 If the Council receives a request for information identifying a whistleblower, it will contact the whistleblower to seek their views in respect of the disclosure or withholding of the information requested and, wherever possible, it will seek to comply with those views.
- 9.9 The Council is mindful, in reconciling the legal obligation to disclose information it holds under the Freedom of Information Act 2000, of its legal obligations under:
- The Public Interest Disclosure Act 1998 to avoid the discrimination or victimisation of employees; and
 - The Health and Safety at Work Etc Act 1974, to protect the health and safety (including mental health) of employees.

10. PROTECTION FOR WHISTLEBLOWERS

- 10.1 Employees are protected if:
- they honestly think what they report is true;
 - they think they are telling the right person; and
 - they believe that their disclosure is in the public interest.
- 10.2 Any employee who makes a 'qualifying disclosure' which meets the definition in the Public Interest Disclosure Act is legally protected against detriment or dismissal for whistleblowing. The Council has adopted this procedure in order to encourage early internal whistleblowing and demonstrate its commitment to preventing victimisation. If an employee claims that, despite that commitment, he or she has been victimised because of blowing the whistle, he or she should make a further complaint under this Policy directly to the Monitoring Officer (contact details outlined in section 7).
- 10.3 An employee has the right to complain of detriment or dismissal as a result of any whistleblowing to an employment tribunal.
- 10.4 Any employee who subjects a whistleblower to a detriment could:
- be subject to an internal Council investigation and potential disciplinary action, including potential dismissal;
 - face a civil claim personally, as the affected whistleblower could be entitled to directly issue a legal claim against the perpetrator.
- 10.5 The Council/School will support the wellbeing of employees who make a protected disclosure through management arrangements for example Occupational Health and monitoring of the individuals wellbeing will continue following any investigation and outcome.

11. RECORDING AND MONITORING

- 11.1 The Council is legally required to maintain a list of concerns raised by employees made under the Public Interest Disclosure Act. Inclusion in this list does not amount to acceptance that the communication amounts to a Protected Disclosure and any subsequent decision that the matter falls outside the Act will be added to the record.
- 11.2 The Head of Democratic and Partnership Services (the Council's Monitoring Officer) has overall responsibility for the maintenance and operation of this Policy and maintains a record of concerns raised and the outcomes (in a form which does not endanger the whistleblower's confidentiality) and may report, in appropriate circumstances, to the Council's Audit Committee.
- 11.3 For the purposes of investigating whether or not there are any systemic issues that need to be addressed, and to monitor the performance of any investigation, an anonymised summary of all disclosures of serious misconduct or wrongdoing, made by employees will be sent on an annual basis to:
- the Head of Service for the area to which the complaint relates; and
 - the Audit Committee.

The Nolan Principles of Conduct Underpinning Public Life

- 1. Selflessness** – Holders of public office should act solely in terms of the public interest.
- 2. Integrity** – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- 3. Objectivity** – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- 4. Accountability** – Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- 5. Openness** – Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- 6. Honesty** – Holders of public office should be truthful.
- 7. Leadership** – Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Holders of public office are defined in law. They include local government Councillors, school governors and clerks to school governing bodies. They also include certain senior local government officers required to be appointed by law.

STRICTLY CONFIDENTIAL

CALDERDALE MBC

PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING) POLICY

REPORT FORM

Data Protection - The Council treats personal data collected while managing a public interest disclosure in accordance with its Data Protection Policy.

Name of Employee making report (You are encouraged to insert your name, but may choose not to do so - the recipient of the form will make every effort to maintain confidentiality)	
Directorate or Service where reporting employee works	
Person(s) reported	
Concerns reported (Give full details of the background to the concern; names, dates and places; and the reasons why you are concerned - ATTACH A SEPARATE SHEET IF NECESSARY)	
Date	
Signed (If employee's name appears above)	

