

Whistleblowing Policy and Procedure



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Section One – Policy and Procedure Overview

1 Policy Statement

- 1.1 Rochford District Council is committed to the provision of the highest quality services for the benefit of the local community and to full accountability for those services.
- 1.2 Although the Council has set in place rules, regulations, quality standards and procedures to ensure that the highest standards of conduct and commitment to service are observed, it recognises that malpractice can occur.
- 1.3 The Council is not prepared to tolerate any such malpractice in the performance and delivery of its services and will treat any complaints very seriously.
- 1.4 The Council encourages all individuals to raise concerns that they may be about the conduct of others in the business or the way in which the business is run.
- 1.5 The identify of any employee who makes a qualifying disclosure (as defined below) shall, so far as is legally possible, be kept confidential
- 1.6 Any employee who, in good faith, makes allegations that turn out to be unfounded will not be penalised for being genuinely mistaken
- 1.7 Legislation provides protection for employees who raise legitimate concerns about specified matters that the employee reasonably believes are in the public interest. This means it must affect the general public. These are called "qualifying disclosures". A qualifying disclosure is one made by an employee who has a reasonable belief that:
 - a criminal offence;
 - a miscarriage of justice;
 - an act creating risk to health and safety;
 - an act causing damage to the environment;
 - a breach of any other legal obligation; or
 - concealment of any of the above;

Is being, has been, or is likely to be, committed. It is not necessary for the employee to have proof that such an act is being, has been, or is likely to be, committed – a reasonable belief is sufficient.

An employee who makes such a protected disclosure has the right not to be dismissed, subjected to any other detriment, or victimised, because he/she has made a disclosure.

2 Policy Principles

- 2.1 Everyone should be aware of the importance of preventing and eliminating wrongdoing at work. Employees should be watchful for illegal or unethical conduct and report anything of that nature that they become aware of.
- 2.2 Any matter raised under this procedure will be investigated thoroughly, promptly and confidentially, and the outcome of the investigation reported back to the employee who raised the issue.
- 2.3 No employee will be victimised for raising a matter under this procedure. This means that the continued employment and opportunities for future promotion or training of the employee will not be prejudiced because they have raised a legitimate concern.
- 2.4 The Council will also take all reasonable steps to prevent that employee from being subjected to any detrimental treatment by a co-worker.
- 2.5 Victimisation of an employee for raising a qualified disclosure will be a disciplinary offence.
- 2.6 If misconduct is discovered as a result of any investigation under this procedure the Council's disciplinary procedure will be used, in addition to any appropriate external measures.
- 2.7 Maliciously making a false allegation is a disciplinary offence.
- 2.8 An instruction to cover up wrongdoing is itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a manager, employees should not agree to remain silent. They should report the matter to the HR Business Partner or another officer named in this policy.

3 Procedure Overview

Stage 1

- 3.1 The Council encourages employees to raise their concerns under this procedure in the first instance. If an employee is not sure whether or not to raise a concern, they should discuss the issue with their line manager or Human Resources.

Stage 2

- 3.2 The issue will be investigated, and necessary action will be taken such as reporting the issue to one of the regulatory bodies. The employee will be advised of the outcome of the investigation (subject to legal constraints)

Stage 3

- 3.3 The employee can report the issue to the HR Business Partner, or another officer designated in this policy if they consider that the issue has not been investigated appropriately or if they consider that they cannot raise the issue with their line manager.

3.4 If on conclusion of Stages 1, 2 and 3 the employee reasonably believes that the appropriate action has not been taken, they should report the matter to the proper authority (see Section Two – Procedure)

4 Scope of this Policy

4.1 This policy applies to all employees of the Council. Other individuals defined as workers are protected by the Public Disclosure Act 1998 (PIDA) although only employees can claim unfair dismissal if dismissed because of whistleblowing. However, both workers and employees can claim detrimental treatment under the legislation. “Workers” include those undergoing training or work experience as part of a training course and agency workers.

4.2 This policy statement covers any malpractice by:

- Any Member of Rochford District Council;
- Any Officer of Rochford District Council; and
- Any partner, contractor, supplier or consultant of Rochford District Council in the course of their work for the Council.

5 Links to other Policies/Procedures

Grievance Policy

5.1 If an employee is concerned that their own employment contract has been, or is likely to be, broken, he/she should use the Council’s grievance procedure.

The difference between a Grievance and a Qualifying Disclosure

5.2 The following illustrates the difference between a grievance and a qualifying disclosure:

5.3 A grievance is made by an employee about issues which just affect them personally whereas a qualifying disclosure is about issues which affect other people (whether or not that conduct affects them personally), in circumstances where the complainant genuinely believes that the conduct in question amounts to a criminal offence, a breach of a legal obligation, or something likely to endanger health or safety or damage the environment.

| Examples of the difference between a Grievance and a Protected Disclosure | |
|---|--|
| Grievance | Protected Disclosure |
| An employee's complaint about the type of work that they are being asked to do, for example if it is not covered by his or her contract | A disclosure that an individual has been instructed to carry out actions that they genuinely believe to be illegal, e.g. to falsify official documents |
| An employee's complaint that they have received insufficient safety training | A disclosure that safety rules within the workplace are routinely being flouted, thus endangering safety |

| | |
|--|--|
| An employee's complaint about the hours that they are expected to work | A disclosure that the requirements imposed by the organisation on a group of staff represent a breach of legislation |
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The Council's Corporate Complaints Policy

5.4 The Council's corporate complaints procedure should be used where any concerns, issues or complaints have been identified which do not fall under the specified scope of this policy .

Section Two – Procedure

1 Roles and Responsibilities

1.1 Line Managers are expected to:

- Be familiar with this policy, undertake the E-learning module on whistleblowing and ensure that all staff in their service area also complete the training
- Be familiar with the policy and be clear on the distinction between a grievance and a complaint raised under the scope of this policy.
- Treat all such disclosures as confidential and seek the advice of Human Resources should they become aware of a complaint raised under this policy.
- Take all complaints raised under this policy or any other complaints policy, seriously and seek to resolve issues as soon as practicable.
- Undertake or participate in an investigation into a complaint raised under this procedure as appropriate.
- Not victimise the employee who has raised an issue under this policy.

1.2 Employees are expected to:

- Raise any concerns or complaints under this policy as soon as identified.
- Participate in any investigation process as necessary.

The Council will regard the failure by an employee to report such malpractice, or the suspicion of malpractice, as a disciplinary matter

1.3 Human Resources will:

- In conjunction with the service if appropriate, ensure that any matter raised under this procedure will be investigated thoroughly, promptly and confidentially, and the outcome of the investigation reported back to the employee who raised the issue.
- Provide advice and guidance on the use of this policy.

2 The Procedure

Raising a Complaint

- 2.1 Concerns may be raised verbally or in writing to Human Resources or an officer listed in this policy.
- 2.2 Although employees are not expected to prove beyond doubt the truth of an allegation, employees will need to demonstrate to the person contacted that there are reasonable grounds for their concern.
- 2.3 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.

- 2.4 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.
- 2.5 Employees may be accompanied by a trade union representative or a workplace colleague to any meetings or interviews in connection with the concerns raised

Stage 1

- 2.6 In the first instance any concerns should be raised with the employee's line manager. If the employee believes the line manager to be involved, or for any reason does not wish to approach the line manager, then the employee should proceed straight to Stage 3.

Stage 2

- 2.7 The line manager will arrange an investigation of the matter (either by investigating the matter them self or immediately passing the issue to someone in a more senior position). The investigation may involve the employee and other individuals involved giving a written statement. Any investigation will be carried out in accordance with the principles set out above. The employee's statement will be taken into account, and they will be asked to comment on any additional evidence obtained. The line manager (or the person who carried out the investigation) will then report to the relevant Assistant Director, Strategic/Managing Director or as appropriate, who will take any necessary action, including reporting the matter to any appropriate government department or regulatory agency. If disciplinary action is required, the line manager (or the person who carried out the investigation) will report the matter to Human Resources. On conclusion of any investigation, the employee will be told the outcome of the investigation and what the Council has done, or proposes to do, about it. If no action is to be taken, the reason for this will be explained.

Stage 3

- 2.8 If the employee is concerned that their line manager is involved in the wrongdoing; has failed to make a proper investigation; or has failed to report the outcome of the investigations to the Council, they should inform the HR Business Partner, who will arrange for another manager to review the investigation carried out, make any necessary enquiries and make his/her own report to the Assistant Director, Strategic/Managing Director as appropriate as in Stage 2 above. If for any other reason the employee does not wish to approach his/her line manager they should also in the first instance contact the HR Business Partner. Any approach to the HR Business Partner will be treated with the strictest confidence and the employee's identity will not be disclosed without their prior consent.
- 2.9 If on conclusion of Stages 1, 2 and 3 the employee reasonably believes that the appropriate action has not been taken, they should report the matter to the proper authority. The legislation sets out a number of bodies to which qualifying disclosures may be made. These include:
- HM Revenue & Customs: www.hmrc.gov.uk
 - Comptroller and Auditor General: www.nao.org.uk
 - the Health and Safety Executive: www.hse.gov.uk

- the Environment Agency: www.environment-agency.gov.uk
- National Crime Agency: www.nationalcrimeagency.gov.uk
- the Serious Fraud Office: www.sfo.gov.uk

The Types of Misconduct that might justify Whistleblowing

2.10 There are many types of conduct that might justify an employee blowing the whistle. Examples include:

- failure to pay staff rates of pay equivalent to at least the minimum wage;
- the use of unsafe equipment or unsafe working practices;
- the employment of illegal immigrants;
- concealment of a chemical spillage that might damage the environment;
- false returns to HM Revenue & Customs;
- falsification of financial records; and
- bribery.

The Routes of Disclosure that are protected

2.11 The law lays down clear principles about how a potential whistle-blower must make a disclosure if the disclosure is to be protected. The disclosure will not be protected unless the employee reasonably believes that it is made in the public interest. The purpose of these rules is primarily to encourage employees to raise their concerns through appropriate channels rather than, for example, publicising their allegations via external or social media. There are six routes that may attract protection, these being:

2.12 to the employer directly;

- to a legal adviser, if made in the course of obtaining legal advice;
- to a Minister of the Crown, where the employee is engaged in Crown or public employment;
- to a 'prescribed person' (see above, Raising a Complaint);
- elsewhere in defined circumstances (see below, Disclosures Elsewhere); and
- elsewhere in exceptionally serious cases (see below, Disclosures in Exceptionally Serious Cases).

Disclosures Elsewhere

2.13 A disclosure made elsewhere – for example, to the police, an elected Member of the Council, an MP, the external audit firm appointed to oversee the Council's affairs, or a non-prescribed regulator – may qualify as a protected disclosure if:

- the employee reasonably believed, at the time of making the disclosure, that he or she would be subjected to a detriment by the employer if disclosure was made to the employer or to a prescribed body;
- the employee had previously disclosed his or her concerns to the employer or a prescribed body; or
- in circumstances where there is no prescribed body, the employee reasonably believed that, if he or she had made the disclosure to the employer, it would have taken steps to conceal or destroy the evidence of malpractice.

2.14 Certain other conditions must also be met. These are that:

- the person making the disclosure must reasonably believe that the information disclosed is substantially true;
- the person making the disclosure must not have done so for personal gain; and
- it must be reasonable in the circumstances for the person to have made the disclosure in that way.

Disclosures in exceptionally Serious Cases

2.15 If the wrongdoing or malpractice is of an exceptionally serious nature, this may provide justification for an employee to disclose it to someone else, for example to the media. 'Exceptionally serious' is not defined in the legislation, but is likely to be restricted to matters where disclosure would serve the public interest.

2.16 The employee making the disclosure must:

- reasonably believe that the information being disclosed is substantially true; and
- not be disclosing the information for financial gain.

2.17 It must also be reasonable in all the circumstances for the person to make the disclosure.

Designated Officers under this Policy

2.18 The following officers are designated contacts under this policy:

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|---|--|
| HR Business Partner (Whistleblowing Officer) | |
| Nicky Amor | 01702 546366, Ext. 3810: HR Direct Dial: 01702 318162 Work Mobile: 07500 835107 nicky.amor@rochford.gov.uk |
| Head of Paid Service | |
| Shaun Scrutton | 01702 546366, Ext. 3400 shaun.scrutton@rochford.gov.uk |
| Monitoring Officer | |
| Angela Law | 01702 546366, Ext. 3701 angela.law@rochford.gov.uk |
| Trade Union Representative | |
| | Unison.RDC@rochford.gov.uk |

The Responsible Officer

2.19 The Managing Director has overall responsibility for the maintenance and operation of this policy. That officer maintains a record of concerns raised and the outcomes (but in a form which does not compromise confidentiality) and will report as necessary to the Council.

3 More Information

3.1 For more information please contact Human Resources or the Whistleblowing Charity Public Concern at Work, www.pcaw.org.uk 020 7404 6609 or **GOV.UK** website

4 Policy ownership and Effective Dates

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|------------------------|-----------------|
| Policy owner: | Human Resources |
| Approving body: | Leadership Team |
| Date approved: | June 2019 |
| Effective date: | June 2019 |
| Review date | June 2021 |
| Version: | 4 |