

Whistleblowing Policy and Procedure



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1. Introduction and Purpose

- 1.1 Chelmsford City Council strives to provide the highest quality services for the benefit of its local community, and does so based on the principles of honesty, openness and accountability.
- 1.2 We have put in place, and regularly review, our rules, regulations, quality standards and procedures which can be found in the Council's Constitution. It sets out how the Council will operate and the procedures it will follow. In particular, it contains rules on how decisions will be taken, who will take them and what they must consider before they do so.
- 1.3 We also recognise that unfortunately these are sometimes not fully followed or things can go wrong. In such cases we will always look into the concerns raised and put things right wherever we can, as well as ensure that any further potential wrongdoing is prevented. Such wrongdoing is referred to in this policy as "malpractice" and we will take action against those who are responsible in appropriate cases.
- 1.4 **The purpose of this policy is to give a clear and unequivocal statement to those who work for the Council, its contractors or suppliers, and to the public, that they need not fear victimisation or any form of reprisal if they report suspected wrongdoing by the Council or those that work for it.**
- 1.5 However, please note that:
 - a) Whilst only workers are afforded the above protection by law, we will afford a similar protection to others whenever we can.
 - b) Differences in the way we will deal with concerns raised are explained in this policy.
- 1.6 This policy explains what can be reported and when. How you should notify us and the action that will be taken is set out in the Annex to this policy. In addition, please be aware that only workers are protected by law. The protections are different if you are a non-worker.
- 1.7 The Council has appointed The Director of Corporate Services as its designated Whistleblowing Officer. The Legal and Democratic Services Manager and the HR Service Manager are responsible for dealing with reported cases in the first instance as her deputies.

2. Who Can Use This Policy to Raise Concerns?

General Requirements

- 2.1 Anyone can raise concerns using this policy but the protection afforded depends on who you are and particularly whether you work for the Council. Anyone who raises such an issue is known as a “whistleblower”. Different requirements and rights are available to different categories of people under this Policy and they are described below.
- 2.2 Guidance on rights and responsibilities in relation to whistleblowing policies has been issued by the Department of Business, Innovation and Skills and can be found at: <https://www.gov.uk/government/publications/whistleblowing-guidance-and-code-of-practice-for-employers>
- 2.3 To be able to claim the protections referred to below, you must have “reasonable grounds for believing” that the information you are disclosing indicates that one or more of the circumstances has occurred, as referred to in paragraphs 3.1 and 3.2 below.
- 2.4 You should report your concerns using the procedure set out in the Annex to this policy.

Workers

Statutory Rights to Protection and How They Can Raise Concerns

- 2.5 There is specific statutory protection given to workers under the Employment Rights Act 1996 as amended (the Act). This states that if they are disciplined or victimised by the Council, just because they have raised a concern about how an issue has been handled by it, they can seek a declaration from an Employment Tribunal that they have been treated unfairly and seek compensation.
- 2.6 That protection only covers the following categories of people as defined in section 47B of the Act:
 - (a) Employees and workers either under a contract of employment or any other contract under which they personally perform any work or service for the Council;
 - (b) Agency workers; and
 - (c) Those undertaking work experience as part of a training course.
- 2.7 This policy and procedure do not replace any of the following:
 - a) Grievance Procedures – personal complaints should be raised under this policy
 - b) Disciplinary Procedures
 - c) Bullying and Harassment Policy
- 2.8 You should therefore only use the Whistleblowing Policy where:
 - a) You have genuine reasons why you cannot use the policies and procedures referred to in paragraphs 2.7 above or 3.2 below;

- b) You have reason to believe that those policies and procedures are failing or are not being properly applied;
 - c) You reasonably believe that the disclosure tends to show past, present or likely future wrongdoing; and
 - d) There is a clear public interest aspect that cannot be properly resolved in any other way.
- 2.9 The protection provided by the Act is not subject to any qualifying period of employment and so is referred to as a 'day one' right in employment law. This means you are entitled to the protection from the day you join the Council
- 2.10 If you believe that you are suffering a detriment as a result of your raising a concern, you should immediately report this. Some examples of detriment include, but are not limited to, the following:
- a) Blocking access to resources or training;
 - b) Bullying or harassment;
 - c) Closer monitoring;
 - d) Demotion;
 - e) Disciplinary sanction;
 - f) Failing to investigate a subsequent concern;
 - g) Failure to promote;
 - h) Failure to provide an appropriate reference;
 - i) Suspension;
 - j) Unrequested re-assignment or re-location;
 - k) Victimisation or Ostracism;
- 2.11 If you are unsure whether to raise a concern, you should discuss the issue with your line manager or the HR department. You may also raise concerns with a more senior manager or a director, or the identified Whistleblowing Officer or her deputies where appropriate.
- 2.12 However, please note that the use of the Whistleblowing procedure should not normally be used to address concerns you have with how you are managed. Instead you should use the Council's grievance procedure.

Non-Workers

Rights granted by the Council and How They Can Raise Concerns

- 2.13 Whilst the legislation only offers protection for workers, the Council also ensures that anyone who discloses potential malpractice by the Council are not victimised and can make their concerns known anonymously if they wish. This protection is extended to:
- (a) Councillors;
 - (b) Those working for a person, firm or organisation supplying goods or services to the Council;
 - (c) Those working for organisations with which we have partnered; and
 - (d) Members of the public.

- 2.14 Anyone in the above categories wishing to raise a concern can do so using this Policy and Procedure. However, before doing so you should consider whether it can instead be reported using the alternative and more appropriate procedures described paragraph 3.3 below.

3. What can, or should not, be reported under this Policy?

- 3.1 You can use this policy to report concerns that relate to **any** unethical or unprofessional behaviour within the Council or by its contractors and suppliers.
- 3.2 Your disclosure does not need to be restricted to something that has already happened but can also relate to a where it is on-going or could occur in the future. Malpractice is where there is, has been or is likely to be any:
- (a) failure to comply with any legal obligations, i.e. any unlawful act, whether criminal or a breach of civil law;
 - (b) maladministration;
 - (c) breach of any statutory Code of Practice;
 - (d) breach of, or failure to implement or comply with any policy determined by the Council or any Committee or Sub-Committee of the Council;
 - (e) failure to comply with appropriate professional standards;
 - (f) incident of corruption or fraud;
 - (g) breach of any Code of Conduct adopted by the Council;
 - (h) actions which are likely to cause physical danger to any person, or to give rise to a risk of significant damage to property;
 - (i) act that creates risk to health and safety;
 - (j) act causing damage to the environment;
 - (k) failure to take reasonable steps to report and rectify any situation which is likely to give rise to a significant avoidable cost, or loss or income, to the Council or would otherwise seriously prejudice the Council;
 - (l) abuse of power, or the use of the Council's powers and authority for any unauthorised or ulterior purpose;
 - (m) miscarriage of justice; or
 - (n) concealment of any of the above.
- 3.3 This policy should **not be used** if you have a complaint about any of the following issues. Instead you should make a complaint using the alternate processes identified:
- (a) **Service you have received or failed to receive from the Council** Please refer to our Corporate Complaints Procedure.
 - (b) **The way you have been treated by officers**
Please also refer our Corporate Complaints Procedure.
 - (c) **About the way a Councillor has behaved or treated you**
Please refer to the Code of Conduct for Councillors and associated Complaints Procedure.
 - (d) **About another organisation or company**, such as the County Council Please refer to our whistleblowing webpage for more information.

(e) **Any issues regarding the safety of children or vulnerable adults.** Please refer to our Safeguarding Policy and Procedure. However, should you have concerns that an issue has been raised and has not been dealt with appropriately under the appropriate procedure and/or if you have serious concerns about how others have been treated when raising a concern please use this procedure.

3.4 In addition, if your concern is not about malpractice, but instead is either a request for more information about the Council's services or you want to ask a question about a service, you can submit an inquiry form. This can be found here.

4. Confidentiality & Anonymity

4.1 We will respect the confidentiality of any whistleblower where they have requested anonymity.

4.2 However, whistleblowers are encouraged to raise concerns openly wherever possible. Anonymous complaints will be investigated but our ability to do so can be hampered by not being able to further explore issues or obtain evidence during the investigative process. Furthermore, we do not know who has provided the information, it is not possible to either reassure or protect you.

5. The Public Interest Test for Protected Disclosures

5.1 For you to be protected against recriminations, victimisation or harassment you must have a **"reasonable belief"** that the disclosure you are making is in the **"public interest"**. This means that you can make a disclosure if you realistically believe that your suspicions are in the public interest (even if after investigation the allegation is found to be incorrect). In addition you will need to show that you have made a disclosure following the correct disclosure procedure.

5.2 Complaints of a personal nature are not protected and you should instead address these through the alternative policies and procedures described in paragraphs 2.7 and 3.3 above.

6. Consequences of not following these Procedures

6.1 The Council will not tolerate any attempt on the part of any employee, Councillor, Council contractor or supplier to apply any sanction or detriment to any person who has reported to the Council, any serious and genuine concern that they may have of apparent malpractice.

6.2 Anyone who victimises a whistleblower will personally be liable as they can directly bring a claim against the culprit.

- 6.3 A worker might choose to approach the media with their concerns. If a worker goes to the media, they can expect in most cases to lose their whistleblowing law rights. It is only in exceptional circumstances that a worker can go to the media without losing their protections.
- 6.4 The Council will vicariously be liable (responsible) for an employee's conduct in victimising a whistleblower. We will deal with any recriminations, victimisation or harassment in the following ways and will take the appropriate action to address it:
- (a) By one of our employees as a serious disciplinary matter;
 - (b) By a Councillor as a serious breach of the Code of Conduct for Councillors;
 - (c) By any contractor or supplier of the Council as a serious breach of contract;
 - (d) By any recipient of a Council service as a breach of the conditions under which that service is provided and will consider whether the service can continue to be supplied at all or in a different way.

7. Employee Co-operation

- 7.1 The Council is entitled to expect the full co-operation of all its employees in securing the highest standards of service delivery.
- 7.2 Where employees of the Council are aware of, or suspect, malpractice in the Council's services, the Council will expect them to report such malpractice.
- 7.3 The Council will regard the failure by an employee to report such malpractice, or the suspicion of malpractice, as a disciplinary matter.

Annex

Whistleblowing Procedure

1. Who will deal with the concerns you raise?

- 1.1 The Council has appointed The Director of Corporate Services to act as its Whistleblowing Officer, However, day to day responsibility for handling any concerns raised will be carried out by the Legal and Democratic Services Manager or HR Service Manager as set out in paragraph 1.7 of the Policy. Collectively they are referred to as the “Whistleblowing Officer” in this procedure.
- 1.2 The Whistleblowing Officer has the following roles and responsibilities:
- (a) To receive and record any concerns under the Whistleblowing policy.
 - (b) To guard the confidentiality of any Whistleblower’s identity where they have requested anonymity.
 - (c) To investigate promptly any Whistleblowing concern using Human Resources, Internal Audit or Legal Services staff resources as appropriate.
 - (d) For the purposes of the investigation, the Whistleblowing Officer has a right of access to the Chief Executive, all Members, Directors of Service and employees of the Council and to all documents and records of the Council.
 - (e) To report the outcome of the investigation to the appropriate Director and/or the Chief Executive and to recommend the action to be taken.
 - (f) Where the complaint relates to the conduct of one of the Directors, the Whistleblowing Officer shall report to the Chief Executive in relation to any investigation or actions that may be required.
 - (g) Where the complaint relates to the conduct of the Chief Executive, the Chief Finance Officer or Monitoring Officer the Whistleblowing Officer shall be the Director of Corporate Services who will take any appropriate action in accordance with the Employment Procedure Rules in the Constitution.
 - (h) To report, as appropriate, either jointly with the Director(s) concerned or in their own right, to the Council, Cabinet and any Committee or Sub-Committee of the Council.
 - (i) To recommend appropriate action to resolve a complaint.
 - (j) To report annually to the Governance Committee on actions taken under the Whistleblowing Policy.

2. How to Tell Us About Your Concerns and What We Will Do

2.1 The **Whistleblowing Officer** can be contacted by:

(a) Filling in our online whistleblowing report form on the internet, which can be found at-
<http://www.chelmsford.gov.uk/whistleblowing>

(b) Sending an Email to:
whistleblowing@chelmsford.gov.uk

(c) By telephoning on 01245 606560;

(d) By sending your concerns in writing in a sealed envelope marked 'private and confidential' addressed to-
The Legal & Democratic Services Manager
Civic Centre
Duke Street
Chelmsford Essex
CM1 1JE

2.2 We will acknowledge receipt of your concerns within 5 working days and confirm how we will deal with the concerns raised and when you can next expect to hear from us.

2.3 If your concerns are complex or may take some time to resolve we will:

(a) Contact you again to confirm this together with details as to what we propose to do and when you can expect this to be resolved.

(b) We may ask you to provide additional information to help us to understand your concerns and ensure that we look into and resolve all the concerns you have.

(c) Meet with you to enable you to provide more detail as needed and you may be accompanied by a workplace colleague or a trade union representative.

(d) Keep you informed if there are likely to be any further changes to this timetable.

(e) At the end of our investigations we will confirm what we propose to do or have done unless there are legal reasons why we cannot do so. If that is the case we will let you know what they are, such as that the information is personal sensitive information about a council employee, which we are prevented from giving you under the Data Protection Act 1998, more details on which you can find here.

2.4 If you did not provide us with your contact details we will still look into your concerns but obviously will not be able to clarify issues with you or confirm what we are doing to look into and resolve your concerns.

3. Alternative Ways to Raise your Concerns - Complaints Procedures using External Organisations

3.1 We appreciate that sometimes you may not feel able or want to raise concerns with us direct, In those circumstances, you can raise them with one of the following external organisations:

(a) Externally appointed Prescribed Persons

Any worker raising concerns can do so by contacting one of the nationally prescribed persons rather than the Council. A list is available in this link:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>

(b) Member of Parliament

A worker or non-worker can contact a member of the House of Commons. Contact details for any Member of Parliament are available in this link:

<http://www.parliament.uk/mps-lords-and-offices/>

(c) Local Government Ombudsman

The Local Government Ombudsman will receive complaints of alleged maladministration against the Council. The contact details are on the LGO website:

www.lgo.org.uk

(d) The Council's External Auditor

The External auditors are appointed to address any concerns as to alleged financial irregularity, unlawful expenditure or loss to the Council. The details of the Council's external auditors can be found on our website at www.chelmsford.gov.uk/audit-letter

(e) Public Concern at Work:

This is a whistleblowing charity, which helps to inform public policy and seek legislative change. They also provide advice to those with whistleblowing dilemmas at work and supports organisations with their whistleblowing arrangements.

Their contact details are available from the organisation's website: www.pcaw.org.uk