WHISTLEBLOWING POLICY AND PROCEDURE

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TENDRING DISTRICT COUNCIL

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WHISTLEBLOWING POLICY AND PROCEDURE

INTRODUCTION

Tendring District Council is committed to high standards of openness, integrity, and accountability in the provision of quality services for the benefit of the local community and is fully committed to being accountable for those services.

The Council has set in place rules, regulations, quality standards and procedures to ensure that high standards of conduct and commitment to service are observed, but it recognises that malpractice can occur. Employees are often the first to realise that there may be something wrong. However, they may not express their concern because they feel that speaking up would be disloyal to their colleagues or the Council, or for fear of recrimination.

In this policy, “Whistleblowing” is the action someone takes to report wrongdoing at work. For example, where there has been suspected misconduct, illegal acts, or failure to act within the Council’s established governance frameworks.

It is expected that most employees would initially raise concerns with their line manager. However, there are a range of other options for employees, which are explained in this policy.

This policy document makes it clear that employees can raise concerns without fear of victimisation, subsequent discrimination, disadvantage or dismissal. It is intended to encourage and enable employees to raise serious concerns within the Council rather than overlooking the problem or "blowing the whistle" outside.

The Whistleblowing Policy is not intended to replace existing procedures, and if the matter of concern should be treated as a grievance and/or complaint, then as well as reporting through the line management structure, employees are asked to consider whether the application of these procedures is appropriate.

The Policy applies to all:

- employees of Tendring District Council;
- employees of contractors working for the Council, for example agency staff;
- employees of suppliers;
- those providing services under a contract or other agreement with the Council; and
- voluntary workers working with the Council.

Disclosures against elected Members are dealt with under a separate procedure and the Council’s Monitoring Officer should be contacted directly in this regard.

Members of the Public may make a disclosure by following the Council’s Anti-Fraud and Corruption Strategy or Complaints Procedure.

The Council has a dedicated Whistleblowing helpline, whistleblowing@tendringdc.gov.uk which all those wishing to make a disclosure may use. This includes employees, volunteers, contractors, suppliers, those providing a

service to the Council and members of the public. This email address is monitored by the Partnership Support Team.

THE LEGAL POSITION

Whistleblowing was introduced by the Public Interest Disclosure Act 1998 (PIDA), now Part IVA of the Employment Rights Act 1996. The legislation provides the legal protection given to Whistleblowers when specific criteria is satisfied. An employee or worker must not be subject to disciplinary action, dismissed or subjected to any other detriment if, in good faith, they have made a "protected" or "qualifying" disclosure.

Other relevant legislation is as follows:

- Public Interest Disclosure (Compensation) Order 1999;
- Public Interest Disclosure (Prescribed Persons) Order 1999 and amendments 2003, 2004 and 2005; and
- Enterprise and Regulatory Reform Act 2013.

This policy has been drafted taking account of guidance on best practice from the charity Protect (previously known as Public Concern at Work), the Chartered Institute of Personnel and Development (CIPD) and Government guidance.

DEFINITIONS

Definitions used in this policy:

Whistleblowing means raising concerns about the types of wrongdoing as listed below:

- A criminal offence has been committed, is being committed or is likely to be committed;
- that a person has failed, is failing or is likely to fail to comply with any legal obligation;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health or safety of any individual has been, is being or likely to be endangered;
- that the environment has been, is being or is likely to be damaged; or
- that information intended to show any matter falling within any one of the above has been, is being or is likely to be deliberately concealed.

Whistleblowing is more formally known as '**making a disclosure in the public interest'**.

Making a disclosure is when an individual makes a report to the Council or an external body about a 'reasonable belief' that one of the things above is taking place. It could also be that it is believed that it will take place in the future. The individual must believe it is in the public interest to disclose it.

Reasonable belief means that the individual does not have to be right about what they report. They just need to believe it is true or have a good reason to think that disclosing it is in the 'public interest'.

Repeating gossip or making allegations dishonestly or spitefully is not considered Whistleblowing.

Public interest means that the individual should not make a disclosure for personal gain but reasonably believe they are acting in the public interest in making the qualifying disclosure.

Good faith means that when the employee makes a disclosure, they must believe it is substantially true. They must not act maliciously, make false allegations, or seek any personal gain.

Prescribed person / body is the correct body for an individual to raise their issue, if they decide to make a disclosure known outside the Council.

Not all forms of disclosure are covered by the PIDA. Therefore, those who are thinking of making concerns known outside the Council should be encouraged to seek legal or professional advice.

AIMS AND SCOPE OF THE POLICY

The Policy applies to all employees of the Council but also to a wider category of "workers". This includes casual workers, contractors, trainees, suppliers, volunteers, and consultants of Tendring District Council who engage with the Council (*hereinafter all categories of workers are referred to as "employees" for ease of reference*). Elected Members of the Council are not covered by the Policy, and therefore, should they wish to raise matters of concern, that would fall within the scope of Whistleblowing, they should refer to the Member Officer Relations Protocol and ultimately, the Head of Paid Service, the Chief Executive.

This Policy aims to: -

- Encourage employees to feel confident in raising serious concerns and to question and act upon concerns about practice;
- Provide avenues for employees to raise those concerns and receive feedback on any action taken;
- Ensure that employees receive a response to concerns and that they are aware of how to take further action if they are not satisfied; and
- Reassure employees that they will be protected from possible reprisals or victimisation, if they have a reasonable belief that they have made any disclosure in good faith.

There are existing procedures in place to enable employees to lodge a grievance relating to employment matters; for example, the Grievance Procedure, Bullying and Harassment Policy and Complaint Procedures, which are outside the scope of this policy.

Any serious concerns that employees have about the conduct of Members of the Council should be referred to the Monitoring Officer.

If an Officer has serious concerns about any aspect of service provision or the conduct of Officers, this should be raised with their line manager in the first instance, or via the

Council's dedicated Whistleblowing helpline email at whistleblowing@tendringdc.gov.uk.

This may be something that: -

- Makes an employee uncomfortable in terms of known standards, experience of the standards they believe the Council subscribes to;
- Is against the Council Standing Orders and Financial Regulations or policies;
- Falls below established standards of practice; or
- Amounts to improper conduct.

They may include: -

- Conduct which is an offence or a breach of law;
- Disclosures relating to miscarriages of justice;
- Health and safety risks, including risks to the public as well as other employees;
- Damage to the environment;
- The unauthorised use of public funds;
- Possible fraud and corruption;
- Sexual, physical, financial or emotional abuse of clients; or
- Other unethical conduct.

PROCEDURE FOR MAKING A DISCLOSURE

The Council is committed to good practice and high standards and wants to be supportive of employees.

Wrongdoing within the Council could have significant financial and/or legal risks for the Council and could damage its reputation within the Community. Therefore, employees and managers should remain vigilant and report any concerns.

The Council seeks the full co-operation of all employees who become aware of or suspect malpractice in the Council's services to report this as quickly as possible. Every appropriate step will be taken by the Council to minimise any difficulties an employee may experience as a result of raising a concern. This will include signposting to counselling via the Council's Employee Assistance Programme and advice as appropriate.

This procedure is to be used in respect of major concerns, which fall outside the scope of procedures already in place to deal with issues relating to employment or financial matters. For example, the Equality and Diversity Policy, Grievance Procedure, Harassment and Bullying Policy, and Job Evaluation Maintenance are the appropriate procedures to deal with issues relating to employment and, likewise, the Internal Audit Section within Finance and IT will deal with issues in respect of their normal audit role.

All cases will be dealt with in a non-discriminatory and consistent way and in accordance with the Council's Diversity and Equality Policies.

Employees are encouraged to discuss the disclosure they wish to make informally with their direct line manager in the first instance. If at this point a disclosure is formally made, it is the line manager's responsibility to escalate the disclosure within the scope of this policy.

However, employees also have the option of discussing concerns with their Head of Service/Assistant Director/Corporate Director, one of the authority's statutory officers, the Assurance and Resilience Manager, a representative from Human Resources, or a Trade Union Representative before raising their concern formally. This is a judgement that should be made by the employee based on the circumstances of the case.

At any stage an employee may email their disclosure to the Council's dedicated Whistleblowing helpline (whistleblowing@tendringdc.gov.uk), which is monitored by the Partnerships Support Team.

If the disclosure is received through the Whistleblowing helpline email, a member of the Partnerships Support Team will acknowledge its receipt as soon as possible, usually within three working days. Any disclosures made directly to an employee's line manager (*or another)* must be acknowledged by them in line with this timescale and then passed to the Partnerships Support Team to be recorded via a central record. This central record will be kept securely, and maintained, with access limited to the Partnerships Support Team.

If the allegation relates to a member of the Partnership Support Team, then the disclosure should be made to the Head of People.

In all instances, an assessment will be undertaken to decide whether the disclosure should be investigated under any of the Council's other policies and procedures and by whom. At this stage, an initial meeting may be required with the Whistleblower to gain further information and establish whether an investigation is necessary. Any meeting under this policy can be arranged away from the workplace, if the Whistleblower prefers, and they may be accompanied by a work colleague or Trade Union Representative for support.

Following the initial assessment, the matter may:-

- be investigated by management, internal audit, or through the Bullying and Harassment Policy, Disciplinary Policy and Procedures or Grievance Policy and Procedure or any other Policy and Procedures;
- be referred to the Police;
- be referred to and dealt with under the Council's Safeguarding Procedures;
- form the subject of an Independent Inquiry; or
- be considered whether the Whistleblower's disclosure may be resolved via other mechanisms such as mediation, training or review or any other form of dispute resolution.

The Whistleblower is to be told within ten working days whether the matter is to be investigated.

If it is determined that the disclosure made should be investigated, details of the proposed action to be taken will be reported back, ideally within twenty working days

of the initial notification of the disclosure. If, in exceptional circumstances, this deadline cannot be achieved because of complicating factors, e.g., the absence of staff involved, the Whistleblower will be kept informed of the date by which the investigation should be completed.

The Council will not tolerate any harassment, bullying or victimisation (*including informal pressure*) and will take appropriate action to protect employees when issues of concern have been raised in good faith.

Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that already affect the Whistleblower.

The timescales included in this procedure are a guide. However, the Council is committed to investigating concerns raised thoroughly and promptly.

Adequate resources will be made available for the investigation of any disclosures of malpractice in accordance with the Whistleblowing procedures.

SUPPORT AVAILABLE TO THOSE WHO HAVE MADE A DISCLOSURE

The Council recognises that the decision to make a disclosure can be difficult. The Council will do what it can to minimise any difficulties that employees may experience as a result of making a disclosure.

The Council will consider what support it can put in place to support the employee throughout the investigation. If appropriate, the Council will consider temporarily redeploying an employee during the investigation.

For those who are not Council employees, the Council will endeavour to provide appropriate advice and support, where possible.

The employee will be kept informed of the progress and outcome of any investigation. However, sometimes the need for confidentiality may prevent the Council from sharing specific details of the investigation or any disciplinary action taken as a result.

CONCERNS RAISED ANONYMOUSLY

Employees are encouraged to put their name to their concern, whenever possible. This usually means a more effective investigation can take place. It is important to note that it may prove more difficult or impossible to investigate the concern without the ability to have a two-way dialogue with the Whistleblower. Anonymous Whistleblowers may not also be able to receive feedback or updates on the actions that have taken place because of their anonymity.

IF THE MATTER IS NOT SATISFACTORILY RESOLVED

If the employee is not satisfied that their concern is being properly dealt with, they may raise it with the Assistant Director, Corporate Director, or another Officer designated to undertake this role. When these internal procedures are exhausted, the employee may

raise the matter with the relevant government department, Police, External Auditor, the Health and Safety Executive (*this list is not exhaustive*).

The Department for Business, Energy and Industrial Strategy (BEIS) Whistleblowing: list of prescribed people and bodies - GOV.UK (www.gov.uk) publishes a list of the prescribed bodies to whom employees can make a protected disclosure.

Before taking this final course of action, the Whistleblower is encouraged to seek legal or professional advice before making a public disclosure, i.e., employment contacts, a solicitor or advice agency.

An official record will be kept of all aspects of the investigation, which will be kept on file for five years.

PROTECTION UNDER THE PIDA

An employee who feels that they have been penalised for making a protected disclosure can make an application to an Employment Tribunal.

The Advisory, Conciliation and Arbitration Service (ACAS), Citizens' Advice, the Whistleblowing charity 'Protect', and the unions can provide further advice and information.

The employee must raise any claim of unfair dismissal within 3 months of their employment ending.

There are no qualifying service periods for taking a case to an Employment Tribunal. Compensation will be determined in accordance with regulations in force at the time.

FALSE, MALICIOUS AND UNTRUE ALLEGATIONS

The Council will take very seriously any frivolous or repeated, false, or malicious allegations which it receives. The making of any frivolous, false, or malicious allegations by any employee of the Council will be regarded as a very serious disciplinary offence, which could in some circumstances be deemed to be gross misconduct in accordance with the Council's disciplinary procedure.

If an employee makes an allegation in good faith but it is not confirmed by the investigation, no action will be taken against the employee.

DATA PROTECTION AND CONFIDENTIALITY

The Council will process any personal data collected as part of the Whistleblowing process in accordance with its data protection policy. Information collected from the point when a Whistleblower raises a concern is held securely and accessed by and disclosed to individuals only for the purposes of dealing with the disclosure.

All concerns will be treated in confidence and every effort will be made not to reveal the employee's identity - at the appropriate time, however, employees may need to come forward as a witness. The employee will be kept fully informed if their identity needs to be revealed and their wishes will be respected. Employees may be

accompanied by a recognised Council trade union official or a work colleague at any meeting held.

MONITORING AND REVIEW

In line with best practice, the Council will maintain in its central record held by the Partnership Support Team, the number and nature of Whistleblowing disclosures it receives, as well as the date and content of feedback provided to the Whistleblower.

The information held in the central record will be evaluated and reviewed periodically by the Council's Statutory Officers, to establish whether current policies, procedures and protocols need to be reviewed and whether any further action must be taken by the Council.

The Council will conduct regular surveys to ascertain the satisfaction of Whistleblowers.

Regular updates of the number of disclosures made will be reported to the Audit Committee on a 6 monthly basis as part of the usual Table of Outstanding Issues Reporting.

Protocols for reporting and evaluating the effectiveness of this policy will be developed by the Council's Audit Committee to ensure that the Policy fulfils its objective of providing a clear, transparent and robust procedure to deal with disclosures and that Whistleblowers are supported and confident in the procedure.

FURTHER ADVICE AND SUPPORT

The Council recommends that if employees wish to report a concern they contact Protect (*previous known as Public Concern at Work*) who provide free, confidential whistleblowing advice.

Website – www.protect-advice.org.uk/
Telephone (general enquiries and helpline) - 020 3117 2520 Monday to Friday
Or via email through the website.

In addition, employees might want to contact ACAS or the Citizens Advice:

ACAS helpline
Website www.acas.org.uk/advice
Telephone: 0300 123 1100, Monday to Friday, 8am to 6pm

Citizens' Advice (CAB)
Website www.citizensadvice.org.uk
Details of our local CAB:
18 Carnarvon Road, CLACTON-ON-SEA, Essex CO15 6QF
https://cabtendring.org/
01255 377080