

Epping Forest District Council

# **Whistleblowing**

## **Policy and Procedures**

### **(Confidential Reporting)**

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<b>Revised by</b>	Sarah Marsh (Chief Internal Auditor)	<b>Policy Lead Officer</b>	Nathalie Boateng (Legal Services Manager)

# CONTENTS

	<b>Page</b>
Introduction .....	3
Aims and Scope .....	3
What is a whistleblower? .....	3
Staff responsibilities .....	4
Safeguarding – allegations of abuse made against staff .....	4
Harassment or Victimisation .....	5
Types of whistleblowing eligible for protection.....	5
Who is protected? .....	5
Who isn't protected? .....	6
Tribunals .....	6
Confidentiality .....	6
Anonymous allegations.....	6
Untrue allegations.....	6
The Responsible Officer .....	7
Reviewing the Policy and Procedure .....	7
Other relevant information .....	7
Other organisation's policies and procedures.....	7
Whistleblowing Procedure .....	8
Raising a concern .....	8
How to raise a concern .....	8
How the Council will respond.....	9
Action to be taken .....	9
Acknowledging receipt.....	10
Timescales.....	10
Investigating Procedure.....	10
Future contact and meetings .....	10
Support offered during the enquiry .....	10
Alleged perpetrator .....	11
How the matter can be taken further .....	11
Other useful contacts.....	12

## **Introduction**

Epping Forest District Council (EFDC) will not tolerate activities such as criminal activity, improper conduct, unethical behaviour, malpractice etc. or any attempt to conceal such activities in the administration of its responsibilities.

The Council believes in having an open and honest culture underpinned by a core set of Values and Behaviours and is committed to the highest possible standards of probity and accountability. In line with that commitment, the Council encourages anyone with serious concerns about any aspects of the Council's work to raise those concerns.

The Council is committed to tackling the types of conduct listed above and other forms of malpractice, including abuse of vulnerable people, and treats these issues extremely seriously.

Employees and Members are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances, they may feel it is easier to ignore the concern rather than report what may just be a suspicion for fear of being wrong.

The Council recognises that some concerns may be extremely sensitive and have therefore established a framework to allow concerns to be raised confidentially and provide for a thorough and appropriate investigation of the matter to bring it to a satisfactory conclusion. It is intended to encourage and enable employees and Members to raise serious concerns within the Council, irrespective of seniority, rank or status, rather than overlooking a problem.

This policy fully complies with and supports The Public Interest Disclosure Act 1998 and The Enterprise and Regulatory Reform Act 2013 (which amends The Employment Rights Act of 1996).

## **Aims and scope**

This policy applies to all employees, Councillors, agency workers and contractors working on the Council's behalf. It also covers suppliers and those providing services under a contract with the Council.

This policy aims to:

- provide ways to raise concerns and receive feedback on any action taken.
- allow staff (and others covered by this policy) to take the matter further if they are dissatisfied with the Council's response.
- reassure staff (and others covered by this policy) that they will be protected from reprisals or victimisation for reporting in good faith.

## **What is a whistleblower?**

It is an employee, a former employee or member of an organisation who reports suspected misconduct to people or entities that have the power and presumed willingness to take corrective action. Officially this is called 'making a disclosure in the public interest'.

Whistleblowing occurs when an individual raises concerns, usually to their employer or a regulator, about a workplace danger or illegality that affects others. The Public Interest Disclosure Act 1998 is the key piece of UK legislation protecting individuals who 'blow the whistle' in the public interest.

## **Responsibilities**

Every-one has a duty to draw attention to bad and/or poor practice in the workplace, including practice that may be criminal, abusive and/or neglectful and unethical. Failure to report amounts to collusion with the perpetrator and abuse. Additionally, those who work with vulnerable people have an individual responsibility to raise concerns with someone who has the authority to take action.

It may be necessary to go outside the immediate work environment or the immediate organisation, for example to Social Services or the Police.

Any person covered by this policy can report things that they know, or suspect aren't right, are illegal or if anyone at work is neglecting their duties. Concerns must be raised when a person reasonably believes that one or more of the following has occurred, is in the process of occurring, or is likely to occur:

- a criminal offence (including fraud, corruption, bribery, money laundering)
- a failure to comply with a statutory or legal obligation
- improper unauthorised use of public or other funds
- improper use or misappropriation of assets (for example, theft of council property)
- a miscarriage of justice
- maladministration, misconduct or malpractice
- endangering of an individual's health and safety
- staff perpetrating abuse of a vulnerable individual
- damage to the environment
- any other similar occurrences
- any instance of unethical behaviour
- deliberate concealment of any of the above

If someone is unsure whether a concern should be raised, advice can be sought from the Section 151 Officer, the Monitoring Officer (the Section 151 Officer and Monitoring Officer are statutory roles), the Chief Executive, the Strategic Director, the Chief Operating Officer, any of the Service Directors or the Chief Internal Auditor. See contact details on page 8 and 9

The overriding concern should be that it would be in the public interest for malpractice to be corrected and, if appropriate, sanctions applied.

## **Safeguarding - allegations of abuse made against staff**

All Council staff (and everyone else covered by this policy) should be aware that colleagues could carry out abuse of children and vulnerable adults and that all allegations are taken seriously so that appropriate action can be taken.

In the event of a serious allegation against a member of staff regarding children or young people, the Council will follow the procedures set out in the Southend, Essex and Thurrock (SET) Child Protection document and will involve the Local Authority Designated Officer (LADO) employed by Essex County Council. If the allegation is regarding a vulnerable adult, the council will follow procedures set out in the Southend, Essex and Thurrock (SET) Safeguarding Adult Guidelines.

If someone feels a colleague has:

- (a) behaved in a way that has harmed a child/vulnerable adult, or may have harmed a child/vulnerable adult; or
- (b) possibly committed a criminal offence against, or related to, a child/vulnerable adult; or
- (c) behaved towards a child/vulnerable adult in a way that indicates they are unsuitable to work with them

then they *must* inform their line manager immediately and follow the relevant procedure as outlined in the Council's Safeguarding Policy and Procedures.

## **Harassment or Victimisation**

Whistleblowers are protected by law and should not be treated unfairly or lose their job because they have 'blown the whistle'.

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 harassment or victimisation and will take action to protect staff when they raise a concern in good faith. This does not mean, if they are the subject of disciplinary or redundancy procedures, that those procedures will be halted as a result of confidential reporting.

## **Types of whistleblowing eligible for protection**

People have in the past often been deterred from whistleblowing about abuse or neglect by duties of confidentiality and/or fear of the consequences of speaking out.

The Public Interest Disclosure Act 1998 seeks to protect individuals making disclosures and expects that malpractice disclosures will generally be made in the first instance to the person's employer or another person/body who appears responsible for the malpractice.

The Act expects employers to have procedures so that staff who have justified concerns about breaches of practice or the law can pass on these concerns to be investigated. Staff are only protected by the Act if they are acting in good faith, and reasonably believe that their allegations are true. Allegations made for financial gain are not protected, even if they are true.

It may be justified for the whistleblower to disclose to a third party in the first instance rather than the employer.

A disclosure made in accordance with the Act's expectations will mean that:

- a confidentiality clause in an employment contract cannot be used to prevent staff from disclosing relevant breaches of the law or practice. This means that confidentiality terms in employment contracts cannot be used by employers who are responsible for breaking a law or for abuse or neglect or other malpractice.
- dismissal on grounds of disclosure within the terms of the Act is automatically unfair and can be challenged before an employment tribunal.

Someone who is treated detrimentally at work because of making a disclosure, which is protected by the Act, may be able to claim compensation at an Employment Tribunal.

The person providing the information may be reluctant to give their name or they may ask that they remain anonymous. Their wishes will be recorded and respected as part of the referral process.

Whilst respecting their right to confidentiality, they cannot however be given an absolute undertaking that they will not be identified at a later date, especially, if any legal action is indicated.

## **Who is protected?**

The following people are protected:

- employees
- agency workers
- people that are training with the Council, but not employed
- self-employed workers engaged by the Council, if supervised or working off-site

- volunteers
- Council Members

A worker will be eligible for protection if:

- they honestly think what they're reporting is true
- they think they're telling the right person
- they believe that their disclosure is in the public interest

Workers who aren't employees cannot claim unfair dismissal because of whistleblowing, but they are protected and can claim what is known as 'detrimental treatment'.

### **Tribunals**

Workers dismissed for whistleblowing can go to an employment tribunal. If the tribunal decides the employee has been unfairly dismissed, it may order that they are:

- reinstated (get their job back)
- paid compensation

A tribunal judge can reduce any compensation awarded by 25% if they find the person has acted dishonestly.

A whistleblower who is bullied at work will also be able to bring a claim to the employment tribunal against their employer or colleagues.

### **Confidentiality**

The Council will respect confidentiality and all steps will be taken to ensure that confidentiality is maintained throughout the process. However, it must be appreciated that the investigation process may reveal the source of the information.

Any statement made by a whistleblower may be required as part of the evidence but could be submitted anonymously, if requested.

### **Anonymous Allegations**

This policy encourages staff to put their name to their concerns. Anonymous allegations make it difficult to assess the veracity (truth) of the person making the allegation as well as the credibility of the facts and evidence on which the concern is based. It is worth remembering that some cases will rise and fall on the credibility of the person making the allegation. Concerns expressed anonymously are more difficult to action effectively, but they will all be considered. In such circumstances, the Council will take the following factors into account when establishing the scope and depth of the investigation:

- the seriousness of the issues raised
- the credibility of the concern
- the likelihood of confirming the allegation from attributable sources and information provided.

### **Untrue Allegations**

If staff make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against them. In raising a concern, you should exercise due care to ensure the accuracy of the information. If you knowingly make a malicious or vexatious allegation or make an allegation for personal gain, then further action may be taken against you (which may include disciplinary action).

## **The Responsible Officer**

The Legal Services Manager, as the Council's appointed Monitoring Officer, has overall responsibility for the maintenance and operation of this Policy. They will maintain a record of all concerns raised and their outcomes (but in a form which will not endanger confidentiality) and will report as necessary to the Council.

The Chief Internal Auditor's annual report to the Audit and Governance Committee will contain details of any concerns raised under this policy. It will also provide updates on whistleblowing arrangements as necessary.

## **Reviewing the Policy and Procedure**

The Legal Services Manager will review this policy annually in conjunction with the Chief Internal Auditor.

Other relevant information

Other relevant EFDC documents that may be read in conjunction with this Policy and Procedure:

- Anti-Fraud and Corruption Strategy (including the Fraud Response Plan and Anti Money Laundering Policy)
- Safeguarding Policy and Procedures.
- Recruitment Policy and Procedures.
- Staff Handbook – Disciplinary, Grievance and Bullying and Harassment Policies and Procedures.
- Staff Code of Conduct.
- Safety Policy.
- Accident and Incident Report Guidance.
- Safe Working Practice Guide – A guide to professional boundaries for Staff.
- Equality and Diversity Policy.
- Customer complaints Policy.
- Data Protection Policy and Procedures.
- IT Policies and Procedures regarding e-safety and appropriate use of the internet.

## **Other organisation's policies and procedures:**

- Southend, Essex & Thurrock (SET) - Child Protection Procedures.
- Southend, Essex & Thurrock (SET) - Safeguarding Adult Guidelines.

## Whistleblowing Procedure

### **Raising a concern**

The way a worker can 'blow the whistle' on wrongdoing depends on whether they feel they can tell their employer. If staff feel they can't tell their employer, they should contact a prescribed person or body such as a trade union etc. If staff decide to blow the whistle to a prescribed person rather than the Council, they must make sure that they've chosen the correct person or body for the issue.

For example:

- HM Revenue and Customs - for taxation, business, finance or fraud.
- The National Audit Office - fraud and corruption in local government.
- The National Crime Agency - about money laundering and major financial crimes.
- The Information Commissioner - data protection and freedom of information rights and duties.
- The Health and Safety Executive - health and safety at work.
- The Pensions Regulator - about occupational and private pensions.

Staff should make disclosures to people other than their employer if:

- they reasonably believe that they will be treated detrimentally for disclosing to the employer; or
- they reasonably believe that the evidence will be destroyed or hidden if the employer is 'tipped off'; or
- the employer has been told but has not taken appropriate action.

### **Raising concerns within the Council – staff should contact one of the following:**

- their Line Manager
- their Service Director
- their Trade Union representative
- the Corporate Fraud Manager
- the Chief Internal Auditor
- the People Team Service Manager

### **Staff may also raise a concern or discuss the issue with anyone on this list:**

Job Title	Name	Contact
The Chief Internal Auditor	Sarah Marsh	01992 564446 smarsh@eppingforestdc.gov.uk
Service Manager – Development Management	Andrew Marx	01992 562041 amarx@eppingforestdc.gov.uk
Continuous Improvement Specialist	Nichola Gambrill	01992 562150 ngambrill@eppingforestdc.gov.uk
Service Manager – Community Resilience	Caroline Wiggins	01992 564122 cwiggins@eppingforestdc.gov.uk
The Chief Executive	Georgina Blakemore	01992 564233 gblakemore@eppingforestdc.gov.uk
Chief Operating Officer	Nick Dawe	01992 562541 ndawe@eppingforestdc.gov.uk
Strategic Director / Section 151 Officer	Andrew Small	01992 564278 asmall@eppingforestdc.gov.uk
Service Director (Planning)	Nigel Richardson	01992 564110 nrichardson@eppingforestdc.gov.uk

Strategic Director	Jennifer Gould	01992 564073 jgould@eppingforestdc.gov.uk
Service Director (Corporate Services)	Paula Maginnis	01992 564536 pmaginnis@eppingforestdc.gov.uk
Service Director (Customer Services)	Rob Pavey	01992 564211 rpavey@eppingforestdc.gov.uk
Team Manager – Tenancy Management	Christopher Walsh	01992 562822 cwalsh@eppingforestdc.gov.uk
Monitoring Officer and Head of Legal Services	Nathalie Boateng	01992 564323 nboateng@eppingforestdc.gov.uk
The External Auditor (who may liaise with the Chief Internal Auditor depending on the type of concern)	Craig Wisdom, Partner at Deloitte	01727 885634 cwisdom@deloitte.co.uk
Corporate Fraud Manager	Martin Crowe	01992 564170 mcrowe@eppingforestdc.gov.uk
Service Manager – People, Culture and Wellbeing	Jo Budden	01992 562312 jbudden@eppingforestdc.gov.uk

### **Elected Members should raise concerns with:**

The Chief Executive, Chief Internal Auditor, Corporate Fraud Manager, Section 151 Officer or the Monitoring Officer.

### **How to raise a concern**

The earlier a concern is expressed, and the more details provided, the easier it will be to effectively investigate and take action. At this stage, staff are not expected to prove the allegation but will need to demonstrate that there are sufficient grounds for the concern, to enable a meaningful investigation to take place.

Staff can raise a concern in the following ways:

#### **In Writing**

- Staff can send a letter or email to one of the people or organisations mentioned in the table above.

Staff should give as much information as they can about their concern giving background information (where relevant), the reason why they're concerned and any important details such as names, dates and places etc. If any evidence is held (such as documents, photographs etc.) this should be provided also.

#### **By Telephone**

- Staff can leave a message on the 24-hour Anti – Fraud / Whistleblowing Hotline 01992 564444; or
- Speak to the Chief Internal Auditor on 07973 733332, a member of the Corporate Fraud Team on 01992 564170 or any other person listed in the table above.

This service is strictly confidential, and staff do not have to give their name if they do not wish to. The person receiving the concern will make notes of any conversations so that, if required, a proper investigation can be undertaken.

#### **Through an Advocate**

Staff may prefer, in order to protect themselves or maintain anonymity, invite their trade union or other representative to raise the matter on their behalf. The representative may be required to obtain additional information so that a proper investigation can be undertaken.

### **How the Council will respond**

#### **Action to be taken**

This will depend on the nature of the concern. The process for fraud, corruption and other criminal investigations is covered in the Fraud Response Plan section of the Anti-Fraud and Corruption Strategy. Whistleblowing matters raised may:

- be investigated internally by Internal Audit.
- be investigated internally by the Corporate Fraud Investigation team
- be investigated internally by an investigating officer appointed by the Monitoring Officer
- be referred to the Police.
- be referred to the external auditor or Ombudsman.
- be referred to the Local Authority Designated Officer (regarding child protection cases).
- form the subject of an independent enquiry.

or any combination of the above.

If the concern is a safeguarding matter, then it will be referred to the Safeguarding Lead Officer or one of the designated deputies who will follow the procedures in the Council's Safeguarding Policy and Procedures.

In order to protect individuals and the Council, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it will take. Some concerns may be resolved by agreed action without the need for further investigation. Any investigations will follow the course of natural justice and in particular will adhere to Articles 6 and 8 of the Human Rights Act 1998 (right to a fair hearing and right to private family life), the Regulation of Investigatory Powers Act 2000 and other appropriate legislation such as The Police and Criminal Evidence Act 1984 and The Criminal Procedure and Investigations Act 1996 (this list is not exhaustive).

#### **Acknowledging receipt**

Within ten working days of a concern being raised, the person to whom the concern has been forwarded will write to the Whistleblower to:

- acknowledge that the concern has been received
- indicate how the matter will be dealt with
- give an initial estimate of how long it will take to provide a final response
- inform on any initial enquiries made (if any)
- inform whether any further investigation is to take place, and if not, why not.

#### **Timescales**

Due to the varied nature of these sorts of matters, which may involve internal investigators and / or the police, it is not possible to lay down precise timescales for such investigations in this Policy. Such matters are expected to be investigated quickly but without compromising a proper investigation.

The Council will respond to all concerns as quickly as possible, but the Council will have to test the concerns as appropriate. It must be noted however that testing a concern is not the same as either accepting or rejecting it. The overriding principle for the Council will be the public interest. In order to

be fair, initial enquiries will have to be made to decide whether an investigation is appropriate and, if so, what form it should take.

### **Investigating Procedure**

Depending on the nature of the allegation received, it is not feasible to incorporate every stage or action in an investigation. However, the following should serve as a set of minimum standards. The Monitoring Officer or their nominated officer may arrange for the appointment of an investigating officer who will:

- Ensure that full details and clarifications of the concern are obtained.
- Consider the involvement of any external agencies at this stage (e.g., the Police).
- Ensure that the allegations are fully investigated with the assistance, where appropriate, of other individuals / bodies.
- Consider in conjunction with the People Team and/or relevant Service Director the potential for suspension from duty of employees for one of the reasons as detailed in the Council's disciplinary policy
- Hold interviews with all relevant people as soon as possible.
- Prepare a written report containing the findings of the investigation promptly at the conclusion of the investigation.
- Keep the complainant informed of the progress of the investigations and, if appropriate, of the final outcome.
- If one or more member(s) of staff is implicated, then they should be informed as soon as is practicably possible.
- The investigator should liaise with the relevant manager(s), where appropriate.
- The investigator must keep an open mind.
- The investigator's report will be passed to the Monitoring Officer who will decide what further action to take; and
- The Monitoring Officer will inform any individuals under investigation and the relevant manager(s), where appropriate, as to whether or not the concern has been substantiated.

### **Future contact and meetings**

The amount of contact between staff raising the concern and the officer(s) considering the issues will depend on the nature of the matters raised, the potential difficulties involved, and the clarity of the information provided. If necessary, further information will be sought from staff in a discreet manner. When any meeting is arranged, staff have the right, if they wish, to be accompanied by a trade union or other representative. The meeting can be off site, if requested.

### **Support offered during the enquiry**

The Council will take steps to minimise any difficulties staff may experience as a result of raising a concern and will provide the appropriate level of support. For instance, if staff are required to give evidence in disciplinary or criminal proceedings, the Council will advise them about the procedure and provide reassurance where required.

With internal proceedings, staff will have the option of asking someone else to represent them.

To maintain confidence in the process, staff will be kept advised of the outcome of any investigation (subject to legal constraints).

Staff can withdraw from the process at any stage but they, or their representative, must inform the person with whom the initial concern was raised and the investigating officer. Staff will be requested to provide a reason for their withdrawal.

### **Alleged perpetrator**

The person against whom the concern has been raised will be informed following the initial investigations if it is considered that there is an issue to be investigated further. This person will be supported in an appropriate manner and will be informed of the progress of the investigation. It should be noted there is a potential for the individual to be suspended from duty for one of the reasons detailed in the Council's disciplinary procedure.

### **How the matter can be taken further**

The Council hopes staff will be satisfied with the response to their concern. However, if staff are not satisfied, they should inform their Service Director, Strategic Director, the Chief Operating Officer or Chief Executive in the first instance.

If staff feel it is right or necessary to take the whistleblowing matter outside the Council, the following are possible contact points:

- the External Auditor
- relevant professional bodies or regulatory organisations
- their solicitor or other legal representative
- the Police
- their Trade Union
- their local Council Member

### **Other useful contacts:**

**Protect** – whistleblowing charity (formally Public Concern at Work)

Provides free confidential advice on how to raise a concern about malpractice at work.

**Tel:** [020 3117 2520](tel:02031172520) [www.protect-advice.org.uk](http://www.protect-advice.org.uk) They also have an online form

### **GOV.UK**

More information on whistleblowing can be found on the GOV.UK website at

**[www.gov.uk/whistleblowing](http://www.gov.uk/whistleblowing)**.