

HR Employment Policy & Procedures

# Public Interest Disclosure Policy

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## Document Management - Version Control

<b>Policy Title &amp; Reference</b>	Public Interest Disclosure Policy	HRP/00	
<b>Version Number &amp; Date</b>	3.0	July 2022	
<b>Title, Version Number &amp; Date of Superseded Version (if applicable)</b>	Public Interest Disclosure Policy	2.0	
<b>Rationale for introduction/Driver for change</b>	Updated to incorporate recommendations made by Internal Audit following an investigation		
<b>Summary of Substantive Changes (if applicable)</b>	<p>Section 8.2 of the Procedure has been changed as new protocols have been introduced to further ensure the confidentiality of Public Interest Disclosure emails and attachments sent to Chief Officers/Chief Executive.</p> <p>Emails sent will be marked as Private to ensure they are visible to the recipient only and not accessible to Leadership Support Personal Assistants.</p> <p>A further failsafe has been introduced, namely that Leadership Support Personal Assistants are instructed to not open Public Interest Disclosure emails.</p>		
<b>Summary of Technical Changes (if applicable)</b>			
<b>Lead Officer</b>	Tara Spooner, HR Adviser		
<b>Final Trades Union Position</b>	The policy was agreed on		
<b>Consultation &amp; Approval Process</b>	<i>Committee/Forum</i>	<i>Date</i>	
	Trades Union Convenors	13/9/22	

	JCF (if applicable)	
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<b>Accompanying Documentation (incl. EIA)</b>	<p>Online forms:</p> <p>Record of Concern:</p> <p><a href="https://intranet.west-dunbarton.gov.uk/people-technology/hr-online/core-employment-policies/making-a-disclosure-in-the-public-interest/">https://intranet.west-dunbarton.gov.uk/people-technology/hr-online/core-employment-policies/making-a-disclosure-in-the-public-interest/</a></p>	
<b>Linked Policy, Schemes and Procedures</b>	<p>Code of Conduct <a href="https://intranet.west-dunbarton.gov.uk/media/15259/code-of-conduct-version-44.pdf">https://intranet.west-dunbarton.gov.uk/media/15259/code-of-conduct-version-44.pdf</a></p> <p>Grievance Policy and Procedure  <a href="https://intranet.west-dunbarton.gov.uk/media/15403/grievance-policy-44-february-2020.pdf">https://intranet.west-dunbarton.gov.uk/media/15403/grievance-policy-44-february-2020.pdf</a></p>	

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## **1. Introduction**

- 1.1** The Council is committed to the highest possible standards of delivery of services and for full accountability for those services. In line with this commitment, employees are encouraged to come forward and raise any serious concerns they may have about malpractice or wrongdoing within the Council, as early as possible, to enable us to deal with risks appropriately.
- 1.2** This policy has been developed to promote, encourage and support employees to make disclosures in the public interest. The supporting procedures outline how to raise concerns, how we will handle concerns and the protection rights for employees. Protection is guaranteed for an employee who raises a reasonable and honest suspicion about a possible fraud, danger or other serious risk that threatens customers, colleagues, the public or the Council's own reputation.

## **2. Scope**

- 2.1** This policy applies to all employees of West Dunbartonshire Council including, Local Government Employees, Quasi-Craft Workers, Teaching Staff and Chief Officers.
- 2.2** Concerns relating to a dispute about the employee's own employment position, with no additional public interest dimension, are out-with the scope of this policy and fall under the remit of the relevant Grievance or Discipline policies.

## **3.0 Definitions**

- 3.1** A disclosure in the public interest is where an employee has a concern about a danger, illegality or malpractice that has a public interest aspect to it; usually because it threatens others such as the local community, service users or other employees.
- 3.2** A qualifying disclosure is a concern about one or more of the following:
- Criminal offences (such as fraud or corruption);
  - A failure to comply with a legal obligation including statutory code of practice;
  - A miscarriage of justice;
  - Threats to an individual's health and safety;
  - Damage to the environment; and/or
  - A deliberate attempt to cover up any of the above.

- 3.3** Where a concern is raised through this policy but is not deemed a disclosure in the public interest, employees will be referred to the most relevant policy to raise their concern.

## **4. Key Principles**

- 4.1** This Policy aims to:-

- Create a culture of openness to encourage employees to raise concerns as early as possible to enable appropriate action to be taken.
- Provide a clear framework for raising concerns and feedback on any action taken.
- Reassure employees that they will be protected from possible reprisals or victimisation when a disclosure is made under the Policy.

## **5. Legislative Context**

- 5.1** The legislative context of the policy is Part IVA (Protected Disclosures) and section 103A of the Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998 and the Enterprise and Regulatory Reform Act 2013 (“the legislation”). The legislation seeks to protect individuals who make certain disclosures of information in the public interest. Such qualifying disclosures that are in the public interest and meet the legal test will be protected in law. The Act also provides a right for individuals to bring action in respect of victimisation related to such qualifying disclosures.

- 5.2** All data recorded under this policy will be held in compliance with GDPR Regulations and the Data Protection Act 2018.

## **6. Application of Policy and Procedures**

- 6.1** To support the application of this policy, separate procedures have been developed. The procedure outlines four routes for employees to make disclosures in the public interest. The four routes are listed below and detail on how to report a concern are outlined in Section 3 of the Procedures:

**Route 1 -** Disclosure made to Line Manager

**Route 2 -** Disclosure made to Line Manager’s Manager or other appropriate Senior Manager

**Route 3 -** Disclosure made to Internal Audit

**Route 4 -** Disclosure made to External Regulating Body

## **7. Roles and Responsibilities**

### **7.1 Council**

- Creating a culture of openness to encourage employees to raise concerns as early as possible.
- Ensuring that appropriate mechanisms are in place for employees to report wrongdoing or malpractice and for such reports to be investigated accordingly.
- Protecting employees making a disclosure in the public interest in line with the legislation.
- Ensuring Internal Audit is advised of the Disclosure in the Public Interest.

### **7.2 Management**

- Maintaining knowledge of the 'Public Interest Disclosure Policy'.
- Carrying out a prompt investigation of any disclosures made in the public interest.
- Supporting employees making a disclosure in the public interest in line with the legislation.

### **7.3 Employees**

- Maintaining knowledge of the 'Public Interest Disclosure Policy'.
- Raising qualifying disclosures as soon as possible in line with procedure to enable management to carry out any required investigation.
- Participating in any resulting investigation.

#### **Internal Audit**

- Carrying out prompt investigation of any disclosures made in the public interest.
- Supporting employees making a disclosure in the public interest in line with the legislation.

### **7.4 Human Resources**

- Providing guidance, advice and support where necessary.
- Carrying out the review of the Policy and Procedure.

### **7.5 Trades Unions**

- Providing guidance and support to employees.
- Accompanying employees to investigatory interviews as required.

## **8. Reviewing and Monitoring**

- 8.1** The policy will be reviewed in accordance with new or amended legislation as required. Responsibility for policy review, informing, negotiating and/or consulting with Trade Unions and reporting to the appropriate Committee rests with the Chief Officer, People and Technology.
- 8.2** All concerns raised under the policy will be reported to Internal Audit who will maintain a central record and report complaints in summary form to the Audit Committee.



## **Procedures**

### **1. Introduction**

- 1.1** These procedures have been developed to support the Public Interest Disclosure Policy and outline how an employee can raise a concern, the steps that will be taken when a concern has been raised, providing feedback, confidential reporting and record-keeping.

### **2. Protection**

- 2.1** Employees making a disclosure in the public interest will be protected against being subjected to any detriment such as dismissal, harassment, victimisation or any other form of punitive sanction when a protected disclosure is made.
- 2.2** For an employee's disclosure to be protected by law they must:
- Disclose information and not simply make unsupported allegations
  - Reasonably believe the information is in the public interest and substantially true
  - Reasonably believe it shows one of the categories of qualifying disclosure, as referred to at 3.2 of the Policy.
- 2.3** If an employee is victimised or treated unfavourably due to making a disclosure in the public interest, this will be a disciplinary matter and will be referred to the appropriate disciplinary policy.

### **3. Reporting a Concern**

- 3.1** Employees should report any concerns as soon as possible using the appropriate reporting route. An employee is not expected to carry out any personal investigations to gather evidence, however they must disclose facts/information (as referred to at 2.2 and 3.4 of this Procedure) to allow the matter to be properly considered.
- 3.2** Any contact with the press must be made through the Chief Officers People and Technology and Citizen, Culture and Facilities (CCF) and take account of the Council's Code of Conduct. Any disclosures to the press or any other person not authorised by the Council, or protected by the Public Interest Disclosure Act, are prohibited and may result in disciplinary action.

#### **REPORTING ROUTES**

##### **Route 1 – Line Manager**

- 3.3 Employees should initially raise any concerns with their direct line manager. Concerns can be raised verbally or in writing.
- 3.4 An employee should provide as much information about the matter including: nature of concern; any relevant background information; the person/people involved, where they work, dates and times; names and jobs of other people who may or may not support the concern.
- 3.5 The Manager hearing the concern will take a record of the details. A template for recording concerns is available at appendix A.

### **Route 2 – Line Manager’s Manager or other appropriate Senior Manager**

- 3.6 When an employee does not feel confident about raising a concern with their line Manager, or they suspect the concern implicates the line Manager in some way, the concern can be raised at a more senior level.
- 3.7 The Manager dealing with the concern will take a record of the details for recording purposes. A template for recording concerns is available at appendix A.

### **Route 3 – Internal Audit**

- 3.8 The Council understands that employees may wish to raise a concern outside of line management or receive independent advice on concerns they may have before reporting this to their Manager. Employees can raise a concern through Internal Audit or by contacting the following number for confidential advice - **01389 737272**
- 3.9 Concerns can be raised verbally or in writing to Internal Audit. Contact details for Internal Audit can be found in Appendix B and on the Intranet.
- 3.10 Employees are not required to complete any paperwork however; Internal Audit will take a record of the details for recording purposes.

### **Route 4 – External**

- 3.11 When an employee makes an internal disclosure in the public interest the relevant external bodies will be notified of any risks identified by the Council. While it is hoped that the Public Interest Disclosure Policy will encourage employees to raise concerns internally, the Council accepts that there may be occasions when an employee may decide that it is not appropriate to raise concerns internally. In this case the employee may contact the appropriate external body (e.g. Police, HSE, registered statutory body) in line with the Code of Conduct.

## **4.0 Handling Concerns**

- 4.1** When a concern has been raised an assessment will be made of the action to be taken. This may involve an internal query or a more formal investigation.
- 4.2** Before an investigation is carried out the line Manager or Internal Audit will consider whether the concerns should be treated as a disclosure in the public interest e.g. something a regulator would consider to be of public interest. This will include considering the following factors:
- An employee making a disclosure in the public interest is best viewed as a witness who is putting the organisation on notice of the risk rather than as a complainant seeking to dictate to the organisation how it responds.
  - A disclosure in the public interest is an aspect of good citizenship in that the employee is speaking up for, and on behalf of, others to draw this malpractice or wrongdoing to the attention of the Council.
- 4.3** If the concerns do not meet these factors, the employee will be directed to the most relevant policy to take their concerns forward.
- 4.4** Management or Internal Audit will consider the information in the context of what they know about the particular area or activity and the information the employee provides. From that, and on the assumption that the information is well-founded, the Manager or Internal Audit should assess:
- how serious and urgent the risk is;
  - whether the concern can best be dealt with under the Public Interest Disclosure policy or some other procedure; and whether the assistance of, or referral to, a Chief Officer or a specialist function will be desirable or necessary.
- 4.5** If the information can simply be followed up during a routine audit, or if it could just as easily have come from a customer complaint, then there will often be practical advantages for all concerned if the organisation addresses the matter on that basis and does not build its response around the employee's evidence. If this appears a realistic way forward, the employee that reported the concern should be informed, where they have provided their details.
- 4.6** If appropriate, the Manager or Internal Audit will conduct an investigation into the concerns and produce a report detailing their findings to be passed to the appropriate departmental Senior Officer. Investigations will be carried out following the Council's standard guidelines on conducting an investigation.

- 4.7 Where Internal Audit finds cause for further action following an initial investigation, this will be passed to the relevant Chief Officer to nominate an appropriate Manager to take forward.
- 4.8 Where specific inquiries need to be made in the area where the employee raising the concern works, the employee should be prepared to answer questions as part of the process.

## **5.0 Outcome of an Investigation**

- 5.1 Following the investigation, if a disciplinary offence has been identified the complaint will then be dealt with under the relevant disciplinary policy.
- 5.2 If a serious issue has been identified, the Manager or Internal Audit will consider informing any external bodies (e.g. a regulator, a supervisory agency or the police) either to enlist their assistance or to reassure them that the matter is being addressed properly.
- 5.3 Following the investigation, if it is identified that there is no case to answer, no further action will be taken.

## **6. Feedback**

- 6.1 When requested, the Council will provide relevant feedback to the employee who raised the concern. While the Council will provide as much feedback as it properly can, due to the legal obligations of confidentiality, feedback will not include the outcome of any disciplinary action taken against another employee or any information that may lead to a wider public disclosure.
- 6.2 Where feedback is limited, employees should be assured that, this does not reflect on the seriousness of the original concern.
- 6.3 In the event that no conclusion can be drawn from the concerns raised, and the employee did not act maliciously, the employee will be advised of the outcome of the investigation with any discrepancies between the initial report and the findings being highlighted.

## **7.0 Deliberately False or Malicious Allegations**

- 7.1 An employee will not be penalised or subjected to any detriment for making a public interest disclosure. However, where a concern is not a public interest disclosure and it is considered that it was raised frivolously, maliciously, was vexatious or for personal gain, this will be a disciplinary matter.

## **8.0 Confidentiality**

- 8.1** Concerns raised will be treated in strict confidence and, when requested, an individual's identity will normally be kept confidential. This ensures protection from reprisal in line with the provisions of the Public Interest Disclosure Act 1998. However in some circumstances it may not be possible to preserve the anonymity of the employee making the initial report. For example, if the matter is serious enough to be investigated in detail by Internal Audit or reported by the Council to an external agency such as the Health and Safety Executive or the Police.
- 8.2** In all cases, concerns directed to Chief Officers will be marked as Private and the subject header will read Strictly Confidential. Emails marked as such are set up so that only the recipient is able to access them. In the event that a Chief Officer's Leadership Support Personal Assistant (PA) comes across a Public Interest Disclosure email, they are instructed to not open the email or any attachments. These established protocols in respect of highly sensitive emails and attachments addressed to Chief Officers, and the responsibilities of their Leadership Support Officers in relation to these, will apply.

## **9.0 Anonymous Allegations**

- 9.1** To assist in the effective investigation of any disclosures made under this policy the Council strongly encourages employees to reveal their identity.
- 9.2** If an employee chooses to make an anonymous disclosure, the Council will not be able to provide any feedback to the individual and the Manager or Internal Audit will have to consider the seriousness of the issue, the credibility of the concern and the likelihood of being able to confirm the allegation, in other ways.

## **10.0 Record Keeping**

- 10.1** A central record of all complaints raised under this policy will be maintained. This will include complaints reported via the confidential helpline or via a Manager. The record will show details of the complaint, action taken and outcome.
- 10.2** Where, following an investigation, no further action is required all documentation will be destroyed.
- 10.3** Following the investigation, if a disciplinary offence has been identified the complaint will then be dealt with under the relevant disciplinary policy and records held in compliance with that policy.

Private and Confidential  
Disclosure in the Public Interest

Record of Concern
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<b>Employee Name</b>	
<b>Employee Reference Number</b>	
<b>Job Title</b>	
<b>Department</b>	
<b>Phone Number</b>	

Details of concerns Raised			
<b>Date concern raised</b>			
<b>Confidentiality Requested</b>	<b>Yes</b>		<b>No</b>

Response	Supporting Evidence
Investigation Approved	
Employee directed to relevant policy to raise concern	
No further Action required	

<b>Line Manager's Signature</b>		<b>Date</b>	
<b>Employee's Signature</b>		<b>Date</b>	

Appendix 2



<b>Internal Audit Contact Details</b>
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<b>E-mail</b>	<a href="mailto:publicinterestdisclosure@west-dunbarton.gov.uk">publicinterestdisclosure@west-dunbarton.gov.uk</a>
<b>Post</b>	Public Interest Disclosure West Dunbartonshire Council 16 Church Street Dumbarton
<b>Intranet/Internet</b>	An online form is available on the Intranet and Internet.
<b>Public Interest Disclosure hotline</b>	01389 737272

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