

THE HIGHLAND COUNCIL
Finance, Housing & Resources Committee
5 June 2013

Agenda Item	16
Report No	FHR/81/13

Whistleblowing Policy
Report by the Assistant Chief Executive

Summary

This report proposes minor amendments to the Whistleblowing Policy to ensure compliance with the Code of Corporate Governance and to include specific reference to the Bribery Act 2010

1. Background

1.1 The Council's Whistleblowing Policy has been in place for a number of years. Following a report on the Bribery Act 2010 to Audit & Scrutiny Committee in September 2011, there was an agreed action to review the policy to ensure there was specific reference to the Bribery Act. A general review of the policy has also been undertaken to ensure it complies with current best practice. There are no actual policy changes which would require consultation with the trade unions but the amended policy will be submitted to the Joint Consultation Group on 28 June 2013.

2. Proposed Amendments

2.1 The main changes are to Section 2 of the policy and are as follows:

- Section 2.2 sets out the 6 qualifying disclosures
- Examples of malpractice or wrongdoing, including reference to the Bribery Act 2010, have now been included to assist with understanding of the policy
- There is clearer reference to other Council procedures

2.2 The other main change is to Section 5 which emphasises that concerns should be raised within the Council in the first instance. However, this section also lists the prescribed persons should an individual feel that it is right to take their concern externally.

3. Implications

3.1 There are no financial, risk, equalities or climate change implications arising from this report.

4. Recommendation

4.1 Members are asked to approve the amendments to the Whistleblowing Policy.

Signature:

Designation: Assistant Chief Executive

Date: 20 May 2013

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Policy on Whistleblowing

Version 3
May 2013

1. Introduction

1.1 Employees and those people who work closely with the Council 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 the Council or to their colleagues. They may fear harassment or that their job may be at risk. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

1.2 The Council is committed to openness, probity and accountability. It expects employees and others with serious concerns about any aspect of the Council's work to come forward and voice those concerns. The Council's employees and those who work closely for the Council, such as agency staff and key contractors, (hereafter called "workers") and as defined in the Public Interest Disclosure Act 1998, have mutual responsibilities of fidelity, support, confidence and trust. This policy lets employees/workers raise serious concerns within the Council rather than overlooking or ignoring a problem or immediately "blowing the whistle" to the media or other external bodies.

1.3 This Policy is intended to build upon the rights/requirements and protections of the Public Interest Disclosure Act 1998, and the Employment Rights Act 1996 and to which reference will be made in the publication of this policy. It does not remove any rights or protection provided by the Acts.

2.

Aims and Scope of the Policy

2.1

This policy aims to:

- provide ways for employees/workers to raise concerns and receive feedback
- inform employees/workers on how to take the matter further if they are dissatisfied with the response; and
- reassure employees/workers that they will be protected from detrimental treatment for "whistleblowing" in good faith

2.2

This policy covers any concerns of employees/workers as to malpractice or wrongdoing. A concern of malpractice or wrongdoing may be if:

- a criminal offence has been committed, is being committed or is likely to be committed; and which may involve reference to the Police and/or
- there has been a failure or likely to be a failure to comply with any legal obligation; and/or
- a miscarriage of justice has occurred or is likely; and/or
- health or safety of any individual has been or is likely to be endangered; and/or
- the environment is being or is likely to be damaged; and/or
- information on the above is being or is likely to be deliberately concealed.

Examples of Malpractice or Wrongdoing

- Fraud
- Breach of the Council's Standing Orders, Financial or Contract Regulations
- Corruption
- Offering/promising/giving of a bribe or agreeing to/receiving/accepting a bribe in contravention of the Bribery Act 2010
- Dishonesty
- Acting contrary to the Council's Code of Conduct for Employees
- Criminal activities
- Creating or Ignoring risks to health, safety or the environment

Note: The above list of examples is not exclusive

Other Procedures

The Whistleblowing policy is specifically for those incidents detailed above. There are other procedures for workplace complaints that members of the public and employees may have about the Council which include:

- The Complaints Procedure which is available to employees as members of the public if in that capacity they have a complaint about service delivery
- The Harassment Policy if an employee considers that they are or someone else is being harassed
- The Grievance Procedure for general work issues

3. How to raise a concern

- 3.1 For relatively minor issues employees/workers should normally raise concerns with their line manager or, failing whom, another senior manager. Section 4 details how the concern will be dealt with. In general, the "whistleblowing" procedure is expected to be used for more serious and sensitive issues or exceptionally serious issues (e.g. corruption, fraud, bribery, unlawful acts) and the first step will be to approach the relevant Director (unless he/she or senior management is the subject of the complaint, in which case the Chief Executive should be informed). Employees of the Chief Executive's Service should raise their concerns directly with the Chief Executive, failing whom either the Depute Chief Executive or the Council's Monitoring Officer. Such officers will have due regard to the requirements of the Council's financial regulations on the reporting of irregularities. Whenever any matter arises which involves, or is thought to involve irregularities concerning finance, assets or property in the exercise of the function of the Authority, the Director concerned will immediately notify the Head of Internal Audit. The Convenor, the Leader, the Depute Chief Executive or the Council's Monitoring Officer are appropriate persons to receive complaints under this Policy either against or which involve the Chief Executive.
- 3.2 This Policy does not preclude disclosure to prescribed regulators or bodies or persons for example Health & Safety Executive and the Scottish Environment Protection Agency or the Local Government Ombudsman in appropriate cases.
- 3.3 Concerns are better raised in writing and a form is available for use Whistleblowing Form. The background and history of the concern, giving names, dates and places where possible, should be set out and the reason why the individual is particularly concerned about the situation. Those who do not feel able to put their concern in writing can telephone or meet the appropriate officer.

3.4 The earlier the concern is expressed, the easier it is to take action.

3.5 Although employees/workers are not expected to prove the truth of an allegation, they will need to demonstrate to the person contacted that there are sufficient grounds for concern i.e. they have an honest and reliable suspicion or belief that malpractice or wrongdoing has happened, is happening, or is likely to happen.

3.6 An individual may invite his/her trade union representative or another person to raise a matter on their behalf, again preferably in writing.

4. How the Concern will be dealt with

4.1 The action taken by the Council will depend on the nature of the concern. There will be a range of actions, including:

- be investigated internally;
- be referred to Internal Audit;
- be referred to the Police
- be referred to the External Auditor;
- form the subject of an independent inquiry.

4.2 Initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Concerns or allegations which fall within the scope of other, existing, procedures (for example child protection or discrimination or harassment issues) will normally be referred for consideration under those other procedures.

4.3 Some concerns may be resolved by agreed action without the need for investigation.

4.4 Within ten working days of a concern being received, the Council will write to the employee/worker (at his/her home address) who raised the issue:

- acknowledging that the concern has been received;
- indicating how it proposes to deal with the matter;
- giving an estimate of how long it will take to provide a final response;
- saying whether any initial enquiries have been made; and
- whether further investigations will take place, and if not, why not.

4.5

The amount of contact between the body or person considering the issues and the individual raising the concern, 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 the individual.

4.6

When any meeting is arranged the employee will have the right, if they so wish, to be accompanied by a trade union or professional association representative or a colleague.

4.7

The Council accepts that employees need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, they will receive information about the outcomes of any investigations.

5. Alternative methods of taking forward a complaint

This policy is intended to provide employees/workers with a way to raise concerns about the Council, within the Council. Concerns should always be raised within the Council in the first instance. The Council hopes this will satisfy employees/workers. However if the individual feels it is right to take the matter outside this process, they have the right to raise a relevant concern with one of the prescribed persons listed in the Schedule to The Public Interest Disclosure (Prescribed Persons) Order 1999. This Schedule includes:

- the Council's External Auditor;
- relevant professional bodies or regulatory organisations;
Health & Safety Executive;
- the Police;
- Audit Scotland;
- Commissioner for Local Government Administration
(The Ombudsman)

If employees/workers do take the matter outside the Council, they need to ensure that in making a disclosure, they do not commit an offence under law. The Secretary of State may prescribe bodies e.g. Audit Scotland, or persons to receive disclosures of concerns of malpractice or wrongdoing. Such a disclosure will be protected provided if it is made in good faith; the individual reasonably believes that the information disclosed and any allegations contained therein to the prescribed body or person is substantially true; and the relevant "failure" falls as a matter for which the person or body has been prescribed.

Disclosures in other cases may be protected if made in good faith with reasonable belief in its truth, not made for personal gain, and if the worker believed he/she would be subject to detriment for disclosure or believed that the evidence would be destroyed or he/she had made a disclosure of substantially the same information to the employer or prescribed person.

Exceptionally serious malpractice may mean bypassing other means of disclosure if in all the circumstances it is reasonable to make the disclosure, in good faith, for no personal gain, in belief that the substance/allegations are substantially true.

6. Safeguards & Protection

6.1

Detrimental Treatment

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 e.g. by colleagues, managers or other workers under the Council's control and will take action to protect employees/workers when they raise a concern in good faith; either during its investigation; and/or subsequent to the investigation.

If an employee/worker is already the subject of disciplinary or redundancy procedures or is using the grievance or harassment or pensions disputes procedure, then those procedures will not necessarily be halted as a result of the "whistleblowing".

6.2

Confidentiality

The Council will do its best to protect an individual's identity when he/she raises a concern and does not want their name to be disclosed. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the individual is likely to be required as part of the evidence.

6.3

Anonymous Allegations

This policy encourages employees/workers to put their names to allegations. Concerns expressed anonymously are much less powerful, but whether they will be followed up is at the discretion of the Council. In exercising this discretion the factors to be taken into account will include:

- the seriousness of the issue raised;
- whether the allegation/expression of concern is worthy of belief; and
- the likelihood of confirming the allegation from attributable sources.

6.4

Allegations Which Cannot Be Confirmed or Are Untrue

If employees/workers make an allegation in good faith, but it is not confirmed by the investigation, the matter will end there. If, however, individuals make malicious or vexatious allegations, disciplinary action may be considered and implemented.

7. Contractors

Key contractors will be informed of this policy and will be encouraged to use it.

8. The Responsible Officer

The Chief Executive has overall responsibility for the maintenance and operation of this policy and will maintain a record of concerns raised and the outcomes (but in a form which does not endanger confidentiality) and will report as necessary to the Council through the Audit and Scrutiny Committee.

9. Review

This policy will be subject to periodic review to ensure continued relevance and consistency in application.