

REPORT TO: Cabinet

MEETING DATE: 13 September 2022

BY: Service Manager – Internal Audit

SUBJECT: Refreshed Whistleblowing Policy

1 PURPOSE

- 1.1 To inform Cabinet of the revisions to the East Lothian Council Whistleblowing Policy, following consultation with Council management and Trade Unions, and request that the refreshed Policy is approved for adoption across the Council.

2 RECOMMENDATION

- 2.1 That the Cabinet approve the refreshed Whistleblowing Policy for implementation across the Council.

3 BACKGROUND

- 3.1 The Council Whistleblowing Policy has been in place since 2004 in its current format. Regular revisions to the Policy have taken place in 2009, 2012, 2014, 2017 and 2018. Revisions are due to take place at least every 3 years, however on review in 2021 it was considered that a broader refresh of the format of the Policy should be undertaken.
- 3.2 The Whistleblowing Policy has been upgraded to a more standard Council HR policy format and updated to take account of some minor legislative wording changes.
- 3.3 The draft Policy has been reviewed and agreed with the Council's Head of Corporate Support and consultations with Trade Unions have taken place, with all suggested wording provided by the Trade Unions following this consultation being included in the Policy presented for approval.
- 3.4 All policy wording amendments are highlighted in red in the attached policy for ease of review, the key amendments are as follows:
- Revised wording, in section 3.1, clarifying the protections provided for employees under the Whistleblowing Policy in line with wording provided by the Trade Unions.

- Clarity over coverage to all Council ‘workers’ and the people therefore protected under this Policy, contained in sections 1.4 and 3.1.
- Inclusion in Section 4 of clarity of reporting to Internal Audit for all suspected Fraud, Corruption, Bribery and Theft, in line with other Council policies.
- Inclusion of the details of the free independent helpline from the whistleblowing charity Protect in section 7.2.
- Updating of the Council, Trade Union and external organisation contact details in appendices 1 to 4.

4 POLICY IMPLICATIONS

4.1 None

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report had an Integrated Impact Assessment completed in December 2021.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
- 6.2 Personnel - None
- 6.3 Other – None

7 BACKGROUND PAPERS

7.1 Whistleblowing Integrated Impact assessment December 2021, published on the East Lothian Council Website

Appendix - Council Whistleblowing Policy (attached)

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DATE	26 August 2022

Whistleblowing Policy

This policy outlines how to make a whistleblowing complaint, to who, and the support and protection available.

Date Approved: 13 September 2022

This is an East Lothian Council Policy which has been subject to consultation with the Joint Trades Unions. Any review or amendment by the council will be following consultation with the Trades Unions.

Policy Title	Whistleblowing Policy
Policy Section	Corporate Policy
Prepared By /Policy Author	Internal Audit
Version Number	V 6.0
Equality Impact Assessment	Complete December 2021
Links to other Council Policies/ processes	Code of Conduct for Employees Policy Data Protection Policy Equal Opportunities Policy Flexible Working Hours Policy IT Acceptable Use Policy Information Security Policy Information and Records Management Policy Social Media Acceptable Use Policy The East Lothian Way Worksmart Policy
Corporate Strategy	East Lothian Council Plan 2017-2022 The Workforce Plan 2018 - 2022 Climate Change Strategy 2020 - 2025 Council Asset Strategy and Management Plan 2018-2023
Approved By	Duncan Stainbank
Date Approved	13 September 2022
Date of next Review	13 September 2025
Policy Lead	Service Manager – Internal Audit

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1. Introduction

- 1.1 This Policy is designed to provide guidance to employees on reporting incidents of malpractice or wrongdoing, which occur at work. It gives clear instructions on how matters can be dealt with thoroughly, discreetly and in a confidential way.
- 1.2 At one time or another you may have had concerns about certain incidents, which have occurred at work. Usually these concerns can be easily resolved. However, when they relate to unlawful conduct, financial malpractice, health and safety issues or dangers to the environment, or the covering up of any of these issues it can be difficult to know what to do.
- 1.3 The Council, with the support of the **Joint** Trade Unions, has introduced this Policy to enable you to raise your concerns as soon as you have a suspicion of any malpractice or wrongdoing. The disclosure should be made in the public interest, which includes a risk to the wider public, customers, staff or the organisation itself.
- 1.4 This policy applies to all employees of the Council and to all workers engaged in the business of the Council **e.g. Agency Workers, Supply Teachers.**
- 1.5 This Policy does not deal with individual employee grievances; a separate Procedure exists for this purpose.

2. Scope of Policy

- 2.1 This Policy covers the following categories of malpractice or potential malpractice:
- A criminal offence;
 - A failure to comply with any legal obligation;
 - A miscarriage of justice;
 - A danger to the health and safety of any individual;
 - **A risk of or actual** damage to the environment; or
 - The deliberate concealment of information indicating any of the above matters.
- 2.2 Examples of malpractice or wrongdoing which should be reported might include:
- Theft of Council property;
 - Misappropriation of Council funds;
 - Release of illegal substances into the water system;
 - Delivery of services when not registered to do so;
 - Breach of Health and Safety Regulations; or
 - Concealment of fraudulent conduct.

3. Principles and Aims

3.1 East Lothian Council is committed to good practice and high standards and wants to be supportive of employees who raise a genuine concern. The Council recognise that the decision to raise a concern can be a difficult one to make and will protect an employee who raises a genuine concern. The following information outlines the new legislative protection offered to employees.

Whistleblowers are protected if they:

- Reasonably believe the information disclosed tends to show that one of the following has happened, is happening, or is likely to happen:
 - A criminal offence;
 - A failure to comply with any legal obligation;
 - A miscarriage of justice;
 - A danger to the health and safety of any individual;
 - A risk of or actual damage to the environment; or
 - The deliberate concealment of information indicating any of the above matters.
- Make the disclosure in the public interest.
- Reasonably believe the information is true.
- Believe the whistleblowing allegation is being made to the right person.

Whistleblowers' rights: An employee cannot be dismissed because of whistleblowing. An employee cannot miss out on opportunities for promotion, transfer, training or any other benefits because of whistleblowing.

The following people are protected:

- Our employees;
- Agency workers;
- Supply Teachers;
- People who are training, but not employed;
- Self-employed workers; and
- Home workers.

3.2 The Council will not tolerate harassment or victimisation and will take appropriate action to protect an employee who raises a concern in the public interest. The Council will consider it a disciplinary matter if any employee causes detriment to a Whistleblowing colleague.

3.3 We recognise that you may want to raise a concern in confidence under this Policy. All concerns raised in accordance with this Policy will be treated with the utmost sensitivity and will be kept confidential unless there is an overriding reason why the identity of the employee(s) raising the concern should be disclosed (for instance if the evidence is needed in court or at a disciplinary hearing). In such circumstances, we may be unable to resolve the concern without revealing your identity. If it

becomes necessary to reveal your identity, the reasons for doing so will be fully discussed with you in advance.

- 3.4 To assist in the effective investigation of concerns this Policy strongly encourages individuals to reveal their identity when reporting a concern. Protection can only be given under this policy to someone who discloses their identity to the Contact Officer when reporting their concern. However, where an anonymous report is received about an alleged malpractice or wrongdoing this also will be acted upon **to the extent it is possible to do so without knowing the identity of the person reporting the concern.**

4. Preventing Fraud, Corruption & Bribery

- 4.1 A number of rules and procedures have been approved and guidance produced to make sure the Council's business is properly controlled. It is important that all elected members and employees are aware of these and act in accordance with their terms. Our guidance documents include the following:

- The Councillors' Code of Conduct;
- Code of Conduct for Employees;
- Financial Regulations;
- Standing Orders and Scheme of Delegation;
- Procurement Manual; and
- Employees' Conditions of Service.

- 4.2 Our employees must read, understand and act in accordance with these rules and procedures. If employees don't follow these procedures and rules, they might after a full investigation of the facts be disciplined which may result in dismissal. All cases of actual or suspected fraud, corruption, bribery and theft must be reported immediately to the Service Manager – Internal Audit as required by the Council Strategy for the Prevention and Detection of Fraud & Corruption. Council Executive Directors and Heads of Service must make sure their employees are aware that this is a requirement of their employment with the Council.

5. Raising a Whistleblowing Concern

- 5.1 There are a number of routes available to raise any concern you may have (either in person, in writing or by telephone), **independent legal advice can be sought from your Trade Union or the charity Protect (see section 7 below):**

Route 1: If you have a concern about malpractice, we hope you will feel able to raise it first with your line manager or team leader. This may be done verbally or in writing.

Route 2: You can call the Council's dedicated Whistleblowing hotline on **01620 827878** or email whistleblowing@eastlothian.gov.uk

Route 3: You can raise your concern with any of the nominated Whistleblowing contact officers from within your service area. Contact details are attached as Appendix 1.

Route 4: If you prefer not to raise your concern within your own service area, you can raise your concern with any of the nominated Whistleblowing contact officers in other service areas or with any of the Council-wide contacts officers. Details of Council-wide contact officers are attached as Appendix 2.

Route 5: If you are unable to make a disclosure using routes 1, 2, 3 or 4 and prefer not to raise your concern internally, you can raise it with an appropriate External Agency such as the Health & Safety Executive, the Scottish Environmental Protection Agency or Audit Scotland. A list of useful contact details is attached as Appendix 3.

(Please note: The statutory provisions providing protection to individuals reporting a concern to external agencies are effective only if certain conditions are satisfied. Translation services and communication support can be made available if required to assist in raising a whistleblowing concern)

6. Responsibilities of the Person you raise your Concern with

6.1 Whichever route you choose, the person you raise your concern with has the responsibility to:

- Consider if your disclosure is being made in the public interest.
- Consider the details of your concern and confirm whether it falls within the scope of this Policy.
- Formally record your concern (a [Record Form](#) is attached as Appendix 5 and can be found on the Intranet).
- Review the details of your concern and determine how to progress it.
- Tell you how your concern will be dealt with and keep you up to date with progress.

7. Independent Advice

7.1 If you are a member of a Trade Union, you may contact your Trade Union representative. Contact details for local Trade Unions are attached as Appendix 4.

7.2 The charity Protect also offers a free, independent helpline on 020 3117 2520.

7.3 Free independent advice is also available from the ACAS helpline on 0300 123 1100.

8. Communications

- 8.1 Once you have informed a Contact Officer of your concern, the Officer (or external agency) will assess what action should be taken. This may involve an internal investigation. You will be told who is handling the matter, how you can contact them and whether you may be needed to give any further assistance. If you wish, we will write to you summarising your concern and setting out how we propose to handle it.
- 8.2 When you raise your concern, you may be asked how you think the matter might best be resolved. If you have any personal interest in the matter, you must tell us at the outset.
- 8.3 A summary of the procedure to be followed in handling your concern is attached as Appendix 6.

9. Outcome of your Concern

- 9.1 You will be given feedback on the outcome of any investigation. If you wish, we will provide this feedback in writing. However we may not be able to tell you the precise action taken where this would infringe data protection requirements or might compromise the taking of further action, including legal action or prosecution.
- 9.2 If following investigation, it is established that an employee raising a concern, did not do so in good faith, but instead knowingly made a false and malicious allegation, then this will be regarded as potential misconduct, which may warrant disciplinary action.

10. Monitoring of this Policy

- 10.1 A summary of concerns raised under this Policy and the outcomes arising from these concerns will be reported on an annual basis. No individuals will be named in this report.
- 10.2 The Head of Corporate Support, Service Manager – Internal Audit and Service Manager – Governance will review the operation of this Policy. To assist in this review, anyone raising a concern under the scope of this Policy may contact any of these three Officers to give feedback of their experiences of using the Policy, including suggestions for improvements.

**Service Manager – Internal Audit
September 2022**

Service Contact Officers

Council Resources

Kenny Christie

Service Manager – Revenues and Welfare Support
kchristie@eastlothian.gov.uk
01620 827431

Alan Cruickshank

Service Manager – IT
acruickshank@eastlothian.gov.uk
01620 827220

Education and Children’s Services

Richard Parker

Service Manager – Education (Strategy and Operations)
rparker@eastlothian.gov.uk
01620 827494

Judith Tait

Head of Children’s Services
jtait@eastlothian.gov.uk
01620 827633

Place

Sharon Saunders

Head of Communities & Partnerships
ssaunders@eastlothian.gov.uk
01620 827632

Tom Reid

Head of Infrastructure
treid@eastlothian.gov.uk
01620 827541

James Coutts

Service Manager – Community Housing & Homelessness
jcoutts@eastlothian.gov.uk
01620 827483

Health and Social Care

Iain Gorman

Head of Operations
Iain.gorman@nhslothian.scot.nhs.uk
01620 827246

Council-wide Contact Officers

Morag Ferguson

Head of Corporate Support
mferguson@eastlothian.gov.uk
01620 827487

Carlo Grilli

Service Manager – Governance
cgrilli@eastlothian.gov.uk
01620 827770

Duncan Stainbank

Service Manager – Internal Audit
dstainbank@eastlothian.gov.uk
01620 827353

External Contacts

Health and Safety Executive (HSE)

Belford House
59 Belford Road
Edinburgh
EH4 3UE

Information line: **0300 790 6787**

Website: www.hse.gov.uk

Scottish Environment Protection Agency (SEPA)

Clearwater House
31 Heriot-Watt Research Park
Avenue North
Riccarton
Edinburgh
EH14 4AP

Website: www.sepa.org.uk

Audit Scotland

4th Floor
102 West Port
Edinburgh
EH3 9DN

Tel: **0131 625 1500**

Email: info@audit-scotland.gov.uk

Website: www.audit-scotland.gov.uk

Trade Union Contact Details

UNISON

Mike Dunlop
UNISON Full-time Officer
John Muir House
Haddington
EH41 3HA
Tel: 01620 827345
Email: mdunlop.unison@eastlothian.gov.uk

Educational Institute of Scotland (EIS)

Gael Gillan
EIS East Lothian Secretary
John Muir House
Haddington
EH41 3HA
Tel: 01620 829010
Email: ggillan.eis@eastlothian.gov.uk

Scottish Secondary Teachers' Association (SSTA)

Monique Dreon-Gould
District Secretary
West End House
14 West End Place
Edinburgh
EH11 2ED
Tel: 0131 313 7300
Email: info@ssta.org.uk

GMB

Benny Rankin
16/1 Timber Bush
Edinburgh
EH6 6QH
Tel: 0131 322 9270
Email: scotland@gmb.org.uk

UNITE

Scott Foley
UNITE Regional Officer
22 York Place
Edinburgh
EH1 3EP
Tel: 0131 556 9676
Email: scott.foley@unitetheunion.org

Whistleblowing Record Form

Appendix 5

<u>Section 1: To be completed by the Contact Officer on receipt of the Concern</u>			
Initial Contact:			
Contact Officer Name:		Contact Officer Tel No:	
Date of first contact:			
Concern Raised By:			
Name:		Tel No:	
Post:		Department:	
Method of Contact:			
Brief Details of Concern:			
Course of Action:			

<u>Section 2: To be completed by the Contact Officer and the Concerned Individual</u>			
Confidential Discussion Meeting			
Present:		Date:	
Summary of Concern Raised:			
Individuals Suggestion for handling Concern:			
Course of Action:			
In Confidence (Permission to Disclose):		YES/NO	
Signed Concerned Individual		Date:	
Signed Contact Officer		Date:	

Section 3: To be completed by the Contact Officer

Steps to be taken to investigate Concerns:

Section 4: To be completed by the Contact Officer

Outcome of Concerns raised:

Section 5: To be completed by the Contact Officer

Record of Feedback to Concerned Individual:

Signed:

Contacts Officer's Name:

Date:

SUMMARY

Appendix 6

Procedure for Handling Your Concern

You:	Identify your concern and gather together any evidence you may have uncovered.
You:	Obtain a copy of the Whistleblowing policy (available on the Council's Intranet, from your line manager, your Trade Union or Human Resources).
You:	May take independent advice on how to handle your concern.
You:	Raise your concern: 1 st contact with Internal/External Contact Officer.
Contact Officer:	Listens to your concern, identifies that it falls within the Scope of the Policy, makes a written record of your first contact, agrees a time to meet with you privately and in confidence to discuss in greater depth.
Contact Officer and You:	Meet and discuss in detail the substance of your concern. You provide any evidence you may have uncovered. Agree if there is any requirement to give further evidence. Jointly, complete the record Form. Contact Officer provides you with details of how to make further contact.
Contact Officer:	Considers the details you have provided. Identifies how best to investigate your concern. Identifies whom to pass details for investigation. Advises you of this step and of any role you may play in the investigation.
Investigation Officer:	Investigates the concerns raised, considers any evidence provided, conduct the investigation to the standard adapted in internal disciplinary processes e.g. signed statements, etc.
Contact Officer:	<p>Receives details of the outcome of the investigation. Considers these and provides you with feedback on the outcome of the investigation. Potential Outcomes may include:</p> <ul style="list-style-type: none"> • Changes to Policy and Practice • Improved Management Practices • Disciplinary Processes • Audit Investigation • Police Enquiry, etc.

