

## REPORTS FROM THE EXECUTIVE AND COMMITTEES TO COUNCIL

### 1 REPORT OF THE EXECUTIVE

#### Whistleblowing Policy

- 1.1 This item of business was referred by the Executive on 11 July 2012 to Full Council with a recommendation on the adoption of a revised Whistleblowing Policy. An extract of the key elements of the report of the Chief Executive to the Executive, including the revised policy, is attached at Appendix A.
- 1.2 It is proposed that Council **RESOLVES** that the revised Whistleblowing Policy be adopted. (CE)

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## WHISTLEBLOWING POLICY

### 1 DECISION BEING RECOMMENDED

- 1.1 To recommend to Full Council the adoption of a revised Whistleblowing policy.

### 2 REASON FOR RECOMMENDATION

- 2.1 The Whistleblowing policy for the Council was last produced in June 2010. The policy has now been reviewed and a new version has been produced and attached as Appendix 1. A summary of changes table is attached at Appendix 2.

### 3 SALIENT INFORMATION

- 3.1 There are no major changes to the policy. However, it has been updated to ensure that issues covered by qualifying disclosures are appropriately identified. The policy now clearly gives guidance to employees about which issues should be raised under the Council's grievance policy and which issues should more appropriately be raised under the Whistleblowing policy.
- 3.2 In addition, the officers to whom employees should raise a complaint are clearly identified as well as line manager, employee, Human Resource responsibilities and the procedure to follow.
- 3.3 Whilst the Whistleblowing policy is now owned by Human Resources, the policy relates to the Council's anti-fraud work and will remain part of Internal Audit's review work to assist in producing the Annual Governance Statement. Internal Audit has been consulted as part of the review process for this policy.
- 3.4 The policy has been subject to consultation with various groups within the Council, including the Trade Union, staff and management.
- 3.5 The policy is included within the Council's constitution.

### 4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 There is the option to retain the existing policy. However, the existing policy is not explicit enough on which issues fall within the scope of a protected disclosure. This has been rectified in the new policy.

### 5 RISK IMPLICATIONS

- 5.1 The risk of not amending the existing policy is that there will be a lack of clarity on which issues should be appropriately dealt with under the policy, which may lead to an inappropriate process and use of resources when investigating complaints. It may also mean that the Council is not complying

with the law to protect workers who raise legitimate issues about specified matters.

**6 RESOURCE IMPLICATIONS**

- 6.1 Funding relating to the training in association with the revised policy is included in existing estimates.

**7 EQUALITY AND DIVERSITY IMPLICATIONS**

- 7.1 There are no equality implications identified although reports on complaints will form part of the regular review by the Human Resource Management Team.

# Appendix 1

Rochford District Council

March 2012

## Whistleblowing policy and procedure

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## Section One

## Policy and procedure overview

### 1 Policy Statement

- 1.1. Rochford District Council is committed to the provision of the highest quality services for the benefit of the local community and to full accountability for those services.
- 1.2. Although the Council has set in place rules, regulations, quality standards and procedures to ensure that the highest standards of conduct and commitment to service are observed, it recognises that malpractice can occur.
- 1.3. The Council is not prepared to tolerate any such malpractice in the performance and delivery of its services and will treat any complaints very seriously.
- 1.4. The Council encourages all individuals to raise concerns that they may about the conduct of others in the business or the way in which the business is run.
- 1.5. The whistle-blower's identity will, so far as is possible, be kept confidential
- 1.6. Any employee who, in good faith, makes allegations that turn out to be unfounded will not be penalised for being genuinely mistaken
- 1.7. Legislation provides protection for workers who raise legitimate concerns about specified matters. These are called "qualifying disclosures". A qualifying disclosure is one made in good faith by an employee who has a reasonable belief that:
  - o a criminal offence;
  - o a miscarriage of justice;
  - o an act creating risk to health and safety;
  - o an act causing damage to the environment;
  - o a breach of any other legal obligation; or
  - o concealment of any of the above;

is being, has been, or is likely to be, committed. It is not necessary for the worker to have proof that such an act is being, has been, or is likely to be, committed - a reasonable belief is sufficient.

A worker who makes such a protected disclosure has the right not to be dismissed, subjected to any other detriment, or victimised, because he/she has made a disclosure.

## **2 Policy principles**

- Everyone should be aware of the importance of preventing and eliminating wrongdoing at work. Workers should be watchful for illegal or unethical conduct and report anything of that nature that they become aware of.
- Any matter raised under this procedure will be investigated thoroughly, promptly and confidentially, and the outcome of the investigation reported back to the worker who raised the issue.
- No worker will be victimised for raising a matter under this procedure. This means that the continued employment and opportunities for future promotion or training of the worker will not be prejudiced because he/she has raised a legitimate concern.
- Victimisation of a worker for raising a qualified disclosure will be a disciplinary offence.
- If misconduct is discovered as a result of any investigation under this procedure the Council's disciplinary procedure will be used, in addition to any appropriate external measures.
- Maliciously making a false allegation is a disciplinary offence.
- An instruction to cover up wrongdoing is itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a manager, workers should not agree to remain silent. They should report the matter to the People and Policy manager or another named officer.

## **3 Procedure overview**

### **Stage one**

The Council encourages workers to raise their concerns under this procedure in the first instance. If a worker is not sure whether or not to raise a concern, he/she should discuss the issue with his/her line manager or Human Resources.

### **Stage two**

The issue will be investigated and necessary action will be taken such as reporting the issue to one of the regulatory bodies. The worker will be advised of the outcome of the investigation (subject to legal constraints)

### **Stage three**

The worker can report the issue to the People and Policy Manager or another officer designated in this policy if they consider that the issue has not been investigated appropriately or if they consider that they cannot raise the issue with their line manager.

If on conclusion of stages 1, 2 and 3 the worker reasonably believes that the appropriate action has not been taken, he/she should report the matter to the proper authority (see Section two – Procedure)

## **4 Scope of this policy**

This policy applies to all employees of the Council. Other individuals performing functions in relation to the organisation, such as agency workers and contractors, are encouraged to use it.

This policy statement covers any malpractice by:

Any Member of Rochford District Council  
Any Officer of Rochford District Council  
Any partner, contractor, supplier or consultant of Rochford District Council in the course of their work for the Council

## 5 Links to other policies/procedures

### 5.1 Grievance policy

If an employee is concerned that his/her own contract has been, or is likely to be, broken, he/she should use the Council's grievance procedure.

#### The difference between a grievance and a protected disclosure

The following illustrates the difference between a grievance and a protected disclosure.

A grievance will concern an employee personally, ie the individual may have a complaint about:

- his or her pay or working hours;
- the amount of work that he or she is expected to do;
- working conditions; or
- being bullied by fellow workers.

A protected disclosure, on the other hand, will concern the conduct of another person in the workplace (whether or not that conduct affects the complainant personally), in circumstances where the complainant genuinely believes that the conduct in question amounts to a criminal offence, a breach of a legal obligation, or something likely to endanger health or safety or damage the environment.

<b>Examples of the difference between a grievance and a protected disclosure</b>	
<b>Grievance</b>	<b>Protected disclosure</b>
An employee's complaint about the type of work that he or she is being asked to do, for example if it is not covered by his or her contract	A disclosure that an individual has been instructed to carry out actions that he or she genuinely believes to be illegal, e.g. to falsify tax returns
A employee's complaint that he or she has received insufficient safety training	A disclosure that safety rules within the workplace are routinely being flouted, thus endangering safety
An employee's complaint about the hours that he or she is expected to work	A disclosure that the requirements imposed by the company on a group of staff represent a breach of the working time legislation



## **5.2 The Council's corporate complaints policy**

The Council's corporate complaints procedure should be used where any concerns, issues or complaints have been identified which do not fall under the specified scope of the Whistleblowing policy (see Policy statement for details of qualifying disclosures under the Whistleblowing policy).

## **Section Two**

## **Procedure**

### **1 Roles and Responsibilities**

#### **1.1 Line Managers are expected to:-**

- Be familiar with the policy and be clear on the distinction between a grievance and a complaint raised under the scope of this policy
- Treat all such disclosures as confidential and seek the advice of Human Resources should they become aware of a complaint raised under this policy.
- Take all complaints raised under this policy or any other complaints policy, seriously and seek to resolve issues as soon as practicable.
- Undertake or participate in an investigation into a complaint raised under this procedure as appropriate
- Not victimise the employee or worker who has raised an issue under this policy

#### **1.2 Employees are expected to:-**

- Raise any concerns or complaints under this policy as soon as identified
- Participate in any investigation process as necessary.

The Council will regard the failure by an employee to report such malpractice, or the suspicion of malpractice, as a disciplinary matter

#### **1.3 Human Resources will:**

- In conjunction with the service if appropriate, ensure that any matter raised under this procedure will be investigated thoroughly, promptly and confidentially, and the outcome of the investigation reported back to the worker who raised the issue.
- Provide advice and guidance on the use of this policy.

### **2 The Procedure**

#### **2.1 Raising a complaint**

Concerns may be raised verbally or in writing

Although employees are not expected to prove beyond doubt the truth of an allegation, employees will need to demonstrate to the person contacted that there are reasonable grounds for their concern

In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take.

Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required, this will be taken before any investigation is conducted.

Employees may be accompanied by a trade union representative or a workplace colleague to any meetings or interviews in connection with the concerns raised

### **Stage one**

In the first instance, and unless the worker reasonably believes his/her line manager to be involved in the wrongdoing, or if for any other reason the worker does not wish to approach his/her line manager, any concerns should be raised with the worker's line manager. If he/she believes the line manager to be involved, or for any reason does not wish to approach the line manager, then the worker should proceed straight to stage 3

### **Stage two**

The line manager will arrange an investigation of the matter (either by investigating the matter him/herself or immediately passing the issue to someone in a more senior position). The investigation may involve the worker and other individuals involved giving a written statement. Any investigation will be carried out in accordance with the principles set out above. The worker's statement will be taken into account, and he/she will be asked to comment on any additional evidence obtained. The line manager (or the person who carried out the investigation) will then report to the Head of Service or Chief Executive as appropriate, which will take any necessary action, including reporting the matter to any appropriate government department or regulatory agency. If disciplinary action is required, the line manager (or the person who carried out the investigation) will report the matter to Human Resources. On conclusion of any investigation, the worker will be told the outcome of the investigation and what the Council has done, or proposes to do, about it. If no action is to be taken, the reason for this will be explained.

### **Stage three**

If the worker is concerned that his/her line manager is involved in the wrongdoing, has failed to make a proper investigation or has failed to report the outcome of the investigations to the Council, he/she should inform the People and Policy Manager, who will arrange for another manager to review the investigation carried out, make any necessary enquiries and make his/her own report to the Head of Service or Chief Executive as appropriate as in stage 2 above. If for any other reason the worker does not wish to approach his/her line manager he/she should also in the first instance contact the People and Policy Manager. Any approach to the People and Policy Manager will be treated with the strictest confidence and the worker's identity will not be disclosed without his/her prior consent.

If on conclusion of stages 1, 2 and 3 the worker reasonably believes that the appropriate action has not been taken, he/she should report the matter to the proper authority. The legislation sets out a number of bodies to which qualifying disclosures may be made. These include:

- HM Revenue & Customs;
- the Financial Services Authority;
- the Office of Fair Trading;
- the Health and Safety Executive;
- the Environment Agency;

- the Director of Public Prosecutions; and
- the Serious Fraud Office.

## **2.2 The types of misconduct that might justify whistleblowing**

There are many types of conduct that might justify an employee blowing the whistle. Examples include:

- failure to pay staff rates of pay equivalent to at least the minimum wage;
- the use of unsafe equipment or unsafe working practices;
- the employment of illegal immigrants;
- concealment of a chemical spillage that might damage the environment;
- false returns to HM Revenue & Customs;
- falsification of financial records; and
- bribery.

## **2.3 The routes of disclosure that are protected**

The law lays down clear principles about how a potential whistle-blower must make a disclosure if the disclosure is to be protected. The purpose of these rules is primarily to encourage workers to raise their concerns through appropriate channels rather than, for example, publicising their allegations in the newspapers. There are six routes that may attract protection, these being a disclosure in good faith:

- to the employer directly;
- to a legal adviser, if made in the course of obtaining legal advice;
- to a Minister of the Crown, where the worker is engaged in Crown or public employment;
- to a 'prescribed person' (see section 2.1 above);
- elsewhere in defined circumstances (see section 2.4 below); and
- elsewhere in exceptionally serious cases (see section 2.5 below).

## **2.4 Disclosures elsewhere**

A disclosure made elsewhere - for example, to the police, an elected Member of the Council, an MP, the external audit firm appointed to oversee the Council's affairs, or a non-prescribed regulator - may qualify as a protected disclosure if:

- the worker reasonably believed, at the time of making the disclosure, that he or she would be subjected to a detriment by the employer if disclosure was made to the employer or to a prescribed body;
- the worker had previously disclosed his or her concerns to the employer or a prescribed body; or
- in circumstances where there is no prescribed body, the worker reasonably believed that, if he or she had made the disclosure to the employer, it would have taken steps to conceal or destroy the evidence of malpractice.

Certain other conditions must also be met. These are that:

- the disclosure must be made in good faith;
- the person making the disclosure must reasonably believe that the information disclosed is substantially true;
- the person making the disclosure must not have done so for personal gain; and
- it must be reasonable in the circumstances for the person to have made the disclosure in that way.

## 2.5 Disclosures in exceptionally serious cases

If the wrongdoing or malpractice is of an exceptionally serious nature, this may provide justification for an employee to disclose it to someone else, for example to the media. 'Exceptionally serious' is not defined in the legislation, but is likely to be restricted to matters where disclosure would serve the public interest.

The worker making the disclosure must:

- make it in good faith;
- reasonably believe that the information being disclosed is substantially true; and
- not be disclosing the information for financial gain.

It must also be reasonable in all the circumstances for the person to make the disclosure.

## 2.6 Designated officers under this procedure

The following officers are designated contacts under this policy:

<b>People and Policy Manager (Whistleblowing officer)</b>		
Claudia McClellan or Janet Cox	(01702) 546366	Extension 3830
	(01702) 318162	Direct Dial
	<a href="mailto:Claudia.mcclellan@rochford.gov.uk">Claudia.mcclellan@rochford.gov.uk</a> or <a href="mailto:Janet.cox@rochford.gov.uk">Janet.cox@rochford.gov.uk</a>	
<b>Chief Executive</b>		
Paul Warren	(01702) 546366	Extension 3000
	<a href="mailto:Paul.warren@rochford.gov.uk">Paul.warren@rochford.gov.uk</a>	
<b>Monitoring Officer</b>		
Albert Bugeja	(01702) 546366	Extension 3700
	(01702) 318130	Direct Dial
	<a href="mailto:albert.bugeja@rochford.gov.uk">albert.bugeja@rochford.gov.uk</a>	
<b>Audit &amp; Performance Manager</b>		
Tracey Metcalf	(01702) 546366	Extension 3210
	(01702) 318031	Direct Dial
	<a href="mailto:Tracey.metcalf@rochford.gov.uk">Tracey.metcalf@rochford.gov.uk</a>	

## 2.7 The Responsible Officer

The Chief Executive has overall responsibility for the maintenance and operation of this policy. That officer maintains a record of concerns raised and the outcomes (but in a form which does not compromise confidentiality) and will report as necessary to the Council

## 3 More information

For more information please contact Human Resources on extension 3801.

## 4 Policy ownership and effective dates

<b>Policy owner:</b>	Human Resources
<b>Approving body:</b>	HR Management Team
<b>Date approved:</b>	11 <sup>th</sup> June 2012
<b>Effective date:</b>	July – exact date to be determined when published on intranet
<b>Review date:</b>	June 2013
<b>Version:</b>	1

Appendix 2

Rochford District Council

Whistleblowing policy and procedure - summary of changes proposed

Item in policy	Existing policy	New policy
Policy presentation		Policy written in new policy template.
Policy ownership	Existing policy owned by Audit	For employees the policy owner is now Human Resources but with collaboration with Audit in production of new policy and at review.
Scope of policy	<p>This policy statement covers any malpractice by:</p> <ul style="list-style-type: none"> <li>Any Member of Rochford District Council</li> <li>Any Officer of Rochford District Council</li> <li>Any partner, contractor, supplier or consultant of Rochford District Council in the course of their work for the Council.</li> </ul>	<p>This policy applies to all employees of the Council. Other individuals performing functions in relation to the organisation, such as agency workers and contractors, are encouraged to use it.</p> <p>This policy statement covers any malpractice by:</p> <ul style="list-style-type: none"> <li>Any Member of Rochford District Council</li> <li>Any Officer of Rochford District Council</li> <li>Any partner, contractor, supplier or consultant of Rochford District Council in the course of their work for the Council.</li> </ul>
Distinction between grievance and whistleblowing policy	Not specifically mentioned in existing policy	Clearly explained in new policy with examples to illustrate.

Item in policy	Existing policy	New policy
Distinction between corporate complaints policy and whistleblowing	Clear that corporate complaints policy is distinct from whistleblowing policy	Clear that corporate complaints policy is distinct from whistleblowing policy.
Qualifying disclosures		Qualifying disclosures which provide protection to employees who may raise a complaint related to one of these disclosures are listed in a new policy.
Protection for employees	Prevention of recriminations, victimisation or harassment included in existing policy as general policy principles	A worker who makes such a protected disclosure has the right not to be dismissed, subjected to any other detriment, or victimised, because he/she has made a disclosure.
Line manager, employee and HR responsibilities	Included in various places throughout new policy	Defined in new policy in usual policy format.  Line managers have a role in investigating concerns or complaints if this is appropriate.
Stages of procedure	Not defined as such in existing policy	Three stages defined but employee can go straight to stage 3 if there are concerns about line manager's role in process.
Accompaniment at meetings	You may invite your trade union, professional association representative or friend to be present during any meetings or interviews in connection with the concerns you have raised	Usual Council policy of trade union representative or workplace colleague included to avoid the possibility of a solicitor or journalist for instance attending such meetings



Item in policy	Existing policy	New policy
Investigation process	Detail of potential investigation process and timescale for initial response to be given to employee	Detail not included in new policy.
Complaints to outside bodies	Information included in existing policy	<p>Clear information in new policy about expectation that employee will raise issue through internal process first if possible. Outside regulatory agencies included in new policy.</p> <p>Made clear the circumstances by which an employee may lose protection if issues raised with an outside body.</p>
List of designated officers	Included in existing policy including name of PKF external audit partner.	<p>Included in new policy but external audit partner named officer removed as will become out of date.</p> <p>Emphasis in policy is to raise issue with People and Policy Manager (as Whistleblowing officer) in the first instance but names given of other officers who can receive complaints.</p>