



Torbay Council

Council Policy document

Whistle-blowing

This Whistle-blowing Policy has been formally agreed by the Scrutiny Committee in August, 1999 and reviewed in October 2006 and October 2008.

PLEASE NOTE: AN INTERIM CHANGE HAS BEEN ADDED TO THIS POLICY AT STEP 2 ON PAGE 6 WITH IMMEDIATE EFFECT FROM 1ST DECEMBER 2012

WHISTLE BLOWING (Speak Up)

The Policy

Any employee who has a concern about any aspect of Torbay Council's work or the actions of its employees should feel able to raise their concerns through established internal channels, without fear of harassment or victimisation.

Torbay Council aims to encourage all its employees to feel confident in raising serious concerns and provide appropriate avenues for dealing with them. It aims to ensure that employees are protected from possible reprisals or disadvantage where they have raised a concern or disclosed information in good faith.

1. AIMS AND SCOPE OF THE POLICY

- (a) This policy aims to:-
- Provide clearly defined channels for staff to raise concerns and receive feedback on any action taken;
 - Inform staff on how to take the matter further if they are dissatisfied with the response; and
 - Reassure staff that they will be protected from reprisals or victimisation for 'Whistle-blowing' in good faith.
- (b) There are existing procedures in place to enable staff to lodge a grievance relating to their own employment. This 'Whistle-blowing Policy' is intended to cover concerns that fall outside the scope of other procedures. That concern may relate to:-
- A criminal offence that has been, is being, or is likely to be committed;
 - A failure to comply with a legal obligation;
 - Child Protection and abuse of vulnerable adults
 - A miscarriage of justice;
 - A damage to the environment;
 - Actions that are contrary to the Council's Standing Orders, Financial Regulations or any other approved policies;
 - Actions or behaviour that falls below established standards of good practice;
 - Abuse or welfare of clients and/or staff;
 - Harassment or victimisation of either staff or clients;
 - Any actions or concerns regarding practice that could result in a financial loss to the Authority;
 - Areas where efficiency or effectiveness could be improved through initiating changes;
 - Health and safety risks (whether to employees or members of the public);
 - The deliberate concealment of information relating to any of the above matters.
 - Other unethical or improper conduct.

The purpose of this policy is to: -

- Encourage individuals to feel confident in raising concerns and to question and act upon concerns about practice;
- Provide clear avenues for individuals to raise concerns and receive feedback on any action taken. (It is not for the individual, however, to say whether that action was appropriate or sufficient);
- Reassure employees that they will be protected from possible reprisals or victimisation if they have a reasonable belief that they have raised a concern in good faith; and
Protect the confidentiality of the individual and consider the needs and concerns of the individual, wherever reasonable, when initiating action

2. GENERAL PRINCIPLES

Employees are often the first to realise that there may be something seriously wrong within an organisation, or the way in which its employees are addressing certain issues. However, they may be reluctant to express these concerns for a number of reasons, such as feeling disloyal to colleagues, fearing discrimination or harassment, or believing their concerns would not be acted upon.

Legislation (the Public Interest Disclosure Act 1998) provides legal protection for employees in certain circumstances who “blow the whistle” on poor or corrupt practice within organisations. The Council is seeking through this policy to build on this existing protection.

Individuals are encouraged to raise **any** concerns that they might have about practice – not just restricting those concerns to those relating to possible fraud or malpractice. In addition all staff have a legal responsibility to raise any issues that involve the welfare of children and vulnerable adults.

This policy applies to all employees of Torbay Council (and workers who are not directly employed by the Council but who provide a service to the Council, e.g. contractors, agency workers,). Those staff employed by the Direct Services and Waste JVC or other partner or contracting organisations can also use this policy to raise any concerns about work undertaken on behalf of Torbay Council. Other concerns should be raised through the host organisations processes. The policy has been discussed with recognised Trade Unions and has their support.

All concerns raised will be treated in confidence and every reasonable effort will be made not to reveal the identity of the individual raising the concern if they so wish. Where a concern is raised anonymously, it will be considered (at the discretion of the Council), taking into account the seriousness of the issue raised, the credibility of the concern and the likelihood of confirming the allegation from other sources.

If an individual makes an allegation or raises a concern **in good faith**, no action will be taken against that individual, even if the allegation is not confirmed by any subsequent investigation.

If, however, there is reasonable evidence that an allegation has been made maliciously, or with the primary intent of personal gain, action may be taken in line with the Council's Disciplinary procedure which can be found on HR pages of the intranet:-
<http://insight/index/information/humanresources/conduct-perf-man/disciplinaryprocedure.htm>

3. SAFEGUARDS

Harassment or Victimisation

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, or suspected of, 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 that if a member of staff is already the subject of disciplinary or redundancy procedures, those procedures will be halted as a result of their raising a concern". Any one who feels they are being victimised or harassed as a result of speaking up should contact Internal Audit, HR or the Executive Head of Governance (or the Chief Executive if referral involved the Executive Head of Governance). Employees have the right to raise any concerns of harassment via the Council's Acceptable Behaviour policy, available from Human Resources and from the Council's intranet site as follows:-
<http://insight/index/information/humanresources/welfareandequality.htm>

Employees can also contact the Council's Confidential Counselling Service. This protection applies to all staff whether or not their names are disclosed to third parties as part of the investigation.

Confidentiality

The Council will do its utmost to protect an individual's identity when they raise a concern and do not want their name to be disclosed. It must be realised and appreciated, however, that the investigation process itself may well reveal the source of the information, and, depending on the outcome, a formal statement by the individual may be required as part of the evidence. However staff will be covered by the protection regardless of whether their names have to be disclosed.

Documents obtained and notes of any interviews or other discussions during the course of an investigation will be kept securely at all times within the Internal Audit Office and retained for a period of 3 years before being destroyed (unless required for prosecution or other legal purpose when they will be retained for 6 years).

Anonymous Allegations

This policy is designed to encourage staff to put their names to allegations. Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the Council. In exercising this discretion, the factors to be taken into account would include:-

- The seriousness of the issue(s) raised;
- The credibility of the concern; and
- The likelihood of confirming the allegation from attributable sources.

Untrue Allegations

If a member of staff makes an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against them. If, however, individuals make malicious or vexatious allegations, disciplinary action may be considered and implemented.

Responsibility of the Head of Business Services/Legal??

To support these principles, the Executive Head of Governance will undertake an overview of Whistle-blowing referrals and will act to ensure staff are protected and kept informed throughout the process and subsequently.

4. WHISTLE-BLOWING PROCESS

STEP 1: Raising a Concern

Employees are encouraged to raise any concerns they have to one of the following people. They are listed in order of preference. If the employee believes that any of the people listed below are implicated in the concern, they should raise the concern with the next most preferred person:-

1. Line Manager
2. Executive Head
3. Director
4. Chief Operating Officer

Trade Union representatives may also be contacted, contact details for Torbay Council's recognised Trade Unions are as follows:-

Unison – please insert TU main office contact details
GMB – as above
Unite – as above

Concerns should be raised in writing providing the reason together with the background and history of the concern, giving names, dates and places if available. There is a duty on an individual to disclose and provide supporting evidence on cases of abuse. Employees can e-mail Internal Audit – whistle.blowing@torbay.gov.uk if they prefer to do so.

Those who do not feel able to put their concerns in writing can telephone the 'Whistle-blowing Hot Line'- The number is 01803 207407. This is operated by the Internal Audit Service and is available 24 hours a day, with an answer phone recording messages left outside normal office working hours. A meeting with the appropriate officer can also be arranged, if desired or required by the individual raising the concern. The earlier the concern is expressed, the easier it is to take action.

In some circumstances, an individual will not want to raise their concerns through any internal route. The Council has, therefore, subscribed to an external hotline, run by a registered charity, Public Concern At Work, who specialise in this area. Employees can contact this organisation at no charge, on a strictly confidential basis, 24 hours a day, 7 days a week. Their telephone number is 020 7404 6609 or, alternatively, by e-mail on whistle@pcaw.co.uk.

Although employees 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 reasonable concern.

Advice and guidance on how matters of concern may be pursued can be obtained from the Internal Audit team or the HR team. Individuals may invite their Trade Union or professional association to raise a matter on their behalf.

Should the complaint be found by the relevant Executive Head to warrant further investigation, he or she will consult with the Chief Internal Auditor & Executive Head of Governance if appropriate on referring it to the appropriate body.

All staff are entitled to raise concerns directly with the Council's external auditors or Local Government Ombudsman should they be unhappy with the internal investigation in terms of the way it has been undertaken.

Advice and guidance on how matters of concern may be pursued can be obtained from the Internal Audit team or the HR team. Individuals may invite their Trade Union or professional association to raise a matter on their behalf.

STEP 2: How the Complaint will be Dealt With

This policy is currently under review and is subject to the following interim change with effect from 1st December 2012:-

Once a complaint is raised, it must be referred to the Chief Operating Officer by the recipient of the complaint. The Chief Operating Officer will notify the Finance, Ethics and Property Group of the matter in order for initial investigations to take place and recommendations for action. The Finance, Ethics and Property Group is made-up of members from the Council's Finance, Human Resources, Audit and Legal Services departments, including the Council's Monitoring Officer.

The Chief Operating Officer will take overall responsibility for action in regard to the complaint, including the Council's formal written response to the matter.

The action taken by the Council will depend on the nature of the concern. The issues raised may be dealt with in one or more of the following ways:-

- Be investigated internally;
- Be referred to the Police;
- Be referred to the External Auditors;
- Form the subject of an independent inquiry by the Ombudsman.

Initial enquiries will be made by Devon Audit Partnership 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 procedures (e.g. child protection or discrimination issues) will normally be referred for consideration under those procedures. Some concerns may be resolved by agreed action without the need for further investigation.

Usually within ten working days of a concern being received, ?? the Head of Legal Services or Head of Business Services will write to the individual:-

- Acknowledging that the concern has been received;
- Indicating how it proposes to deal with the matter;
- Giving an estimate of how long it is likely to take to provide a final response;
- Telling him/her whether any initial enquiries have been made;
- Telling him/her whether further investigations will take place, and if not, why not.
- Thanking him/her for raising their concerns and advising them of this policy and the protection and support it provides to Whistleblowers, and
- Advising them not to discuss their concerns with others so as not to prejudice any investigation.

If it is not possible for further information is required a meeting may need to be arranged. At such a meeting employees have the right to be accompanied by a Trade Union or professional association representative or a friend or colleague who is not involved in the area of work to which the concern relates.

STEP 3: Investigation Process

Effective communication and support systems are fundamental to the success of the policy and ensuring employees are confident that issues which they raise will be thoroughly and conscientiously investigated. In order to protect individuals and any person(s) accused, initial inquiries will be made to establish whether a formal investigation is appropriate and, if so, what form it should take.

Managers or trade union representatives who have concerns raised with them should normally notify Internal Audit immediately, if the concern / allegation involves either potential fraudulent practice or activity that could result in a financial loss to the Council. The integrity and confidentiality of the originating source must normally be maintained throughout.

Similarly, if a concern raises issues relating to employee or client(?) welfare, Human Resources should be notified at the earliest possible opportunity.

Concerns raised via the external hotline will not be fed back to the Council without the express permission of the individual concerned. Where any concerns are fed back and in any other cases where issues arise, Devon Audit Partnership will act as the filter for receiving and recording concerns. They will not necessarily conduct investigations in all these cases, but they have the responsibility for contacting the most appropriate team/officer to action any required follow-up or investigation.

The role of Councillors(/) and union representatives in this process will be to act as an independent contact point, receiving and passing on relevant information to Internal

Audit. It is not envisaged that Councillors or union representatives will either lead, or be involved, in actual investigations, although they will be kept appropriately informed in respect of relevant progress made in respect of specific allegations.

Some concerns will be resolved without the need for a formal investigation, however, where a formal investigation is required, it is likely to take the form of an investigation by a senior manager or the Devon Audit Partnership. . In certain cases, the matters raised may be referred to the Police or the Council's external auditors for investigation or an independent inquiry could be set up.

The overriding principle that the Council will consider in investigating any issue is the public interest. Concerns or allegations that fall within the scope of existing Council procedures, such as disciplinary matters or child protection, will normally be referred for consideration under those procedures.

STEP 4: Responding to Concerns Raised

Following the investigation process, The Head of Legal Services or Head of Business Services will provide a formal written response to the individual thanking them for raising the concern and advising them, subject to any legal constraints, of the actions taken and the outcomes of any investigations. If possible, copies of reports and other appropriate documentation will also be made available to them (if appropriate in a redacted form). The Whistleblower will be offered a meeting with the investigator or the Executive Head of Governance if further briefing is required

The individual is not entitled to be able to determine the outcome of the investigation process or to insist that disciplinary action must be taken or a prosecution instigated. Equally, however, they are entitled to be given the opportunity to express their views to the investigator and the Executive Head of Governance as to whether or not they are satisfied with the manner in which their concerns have been addressed.

If the individual is not satisfied with the outcome they can raise their concerns at a further meeting as outlined above and if they remain unsatisfied following this they can write to the Chief Operating Officer, or to the Chairman of the Audit Committee. If they still feel that their concerns have not been investigated thoroughly, there are other means of raising those concerns more widely to the Council's External Auditors or other regulatory bodies.

5. ALTERNATIVE METHODS OF TAKING FORWARD A CONCERN

This policy is intended to provide staff with a process to raise concerns with the Council. However, If an individual feels it is right to take the matter outside this process, the following are possible contact points:-

- The local Council member (if you live in the area of the Council);
- The Chief Operating Officer;
- The External Auditor;
- Relevant professional bodies or regulatory organisations;
- Individuals' solicitors;
- Public Concern at Work;

- The Police.
- The Local Government Ombudsman

If an employee does take the matter outside the Council, they need to ensure that they do not disclose confidential information or that disclosure would be privileged. This can be checked with the Ombudsman who will also advise on ways to proceed.

The address and contact details are as follows: -

Local Government Ombudsman
The Oaks No2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB

Local Government Ombudsman Advice line:- 0300 061 0614

Email: lgo.org.uk

6. SUPPORT & GUIDANCE

The Council is committed to ensuring that individuals who raise concerns feel valued and respected within the organisation, therefore every endeavour will be made to ensure that they are offered appropriate guidance and support throughout the process and protection from harassment or victimisation as a result of their action.

In supporting this, the Executive Head of Governance may encourage the appointment of a “buddy” to support the individual during and after the investigation of their concern. This “buddy” may be a Council Officer or a person suggested by the individual (or their Trade Union).

Due regard and sensitivity will be exercised by all involved in the process to ensure that the employee raising the concern does not suffer detrimental treatment as a result of raising a complaint.

Further support can be obtained through the Council’s Confidential Counselling Service, Tel: 01803 207347 or the 24-hour answer phone 01803 207349)

The Public Concern At Work Hotline is also available on a confidential basis by contacting Tel: 020 7404 6609 or, alternatively, by e-mail on whistle@pcaw.co.uk.

The Council will take steps to minimise any difficulties which employees may experience as a result of raising a concern. For instance, if members of staff are required to give evidence in criminal or disciplinary proceedings, the Council will advise them about the procedure and offer appropriate support. In addition staff will be supported throughout the process including dealing with the media as appropriate

7. MONITORING OF THE POLICY

The Executive Head of Governance and Chief Internal Auditor have overall responsibility for the maintenance and operation of this policy. The Chief Internal Auditor maintains a record of concerns raised and the outcomes (but in a form which does not endanger confidentiality) and will report as necessary to the Audit Committee, Overview & Scrutiny Board, Standards Committee and Council.

8. CONCLUSION

This policy has been developed as part of the Council's commitment to ensuring the highest possible standards of openness, probity and accountability in all its activities and services.

Procedures have been established to ensure that there are appropriate channels available to employees to raise any concerns they have about the Council's work or the actions of individual employees. Any employee who has any concern is strongly encouraged to raise it through one of the mechanisms outlined in this policy.

WHISTLE-BLOWING PROCESS





