

**Torbay Council**

**DRAFT Whistle-blowing Policy**

**March 2013**

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## ***Introduction***

All of us at one time or another has concerns about what is happening at work. Usually these concerns are easily resolved. However, when they are about unlawful conduct, financial malpractice and similar wrongdoings, it can be difficult to know what to do.

Torbay Council has introduced this policy to enable employees to raise concerns about malpractice/wrongdoing at an early stage and in the correct way. The Whistle-blowing Policy is to be used for reporting concerns where the employee holds a reasonable belief that the concern is within the public interest or where the organisation, and/or members of it, may be at risk.

## ***Aims of the Policy***

This policy aims to:-

- Inform employees on how to appropriately take issues of concern forward, using the correct policies and procedures;
- Provide a clear procedure for employees to raise concerns and receive feedback on any action taken;
- Ensure that confidentiality of the disclosure is maintained as far as possible;
- Reassure employees that they will be protected from reprisals or victimisation for 'Whistle-blowing' in good faith and in accordance with this procedure.

## ***Scope***

This policy applies to all employees of Torbay Council. Contractors, partner agencies, agency workers and Apprentices/trainees who wish to raise whistleblowing concerns can do so through this policy or directly through the use of their contracting organisation's policies. A separate model policy exists for Schools and Academies, which is available from the HR intranet page.

## ***What is Whistleblowing?***

Someone "blows the whistle" when they tell their employer, regulator, customers, the police or media about a dangerous or illegal activity they are aware of through work.

Whistleblowing legislation is in place to protect workers from dismissal or victimisation at work in the event that they disclose some sort of wrongdoing to the employer or another appropriate body.

The Public Interest Disclosure Act 1998 and the Employment Rights Act 1996 clearly define what types of disclosure qualify the person making them for protection against dismissal and detrimental treatment by their employer. These are known as 'protected' disclosures.

A qualifying disclosure can be one of the following:

- a criminal offence;
- a miscarriage of justice;
- an act creating risk to health and safety;
- an act causing damage to the environment;
- a breach of any other legal obligation; or
- is being, has been, or is likely to be, committed.

A disclosure will also be protected if the information disclosed is of a nature that shows that any of the above is likely to be deliberately concealed.

The law also protects the individual from detrimental treatment by work colleagues for raising a concern. The Council is 'vicariously' liable for any wrongdoing of this nature unless it can prove that it took all reasonable steps to protect the individual who raised the concern from detrimental treatment by their co-worker.

### ***What is the difference between making a complaint and blowing the whistle?***

When someone blows the whistle they are raising a concern about danger or illegality that affects others (for example customers, members of the public, or their employer). The person blowing the whistle is usually not directly, personally affected by the danger or illegality. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concern – they are simply trying to alert others. For this reason, the whistleblower should not be expected to prove the malpractice, but to give clear, factual information about the concern. He or she is a messenger raising a concern so that others can address it.

This is very different from a complaint or grievance. When someone complains or raises a grievance, they are saying that they have been personally treated poorly. This poor treatment could involve a breach of their individual employment rights or unacceptable behaviour and the complainant is seeking redress or justice for themselves. The person making the complaint therefore has a vested interest in the outcome of the complaint and for this reason, is expected to prove their case.

Some examples showing the differences are as follows:-

<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 of employees and/or the public
An employee's complaint about the hours that he or she is expected to work	A disclosure that the requirements imposed by the organisation on a group of employees represent a breach of the working time legislation.

Where an employee has an individual complaint relating to their employment, for example, their contract of employment, pay, conditions, should raise this under the Council's Grievance procedure. For complaints regarding unacceptable behaviour or discrimination, please refer to the Acceptable Behaviour policy. Both policies are available from the Council's HR intranet page.

### ***Safeguarding Whistleblowers***

In accordance with the law, the Council undertakes that no employee who reports a concern in the public interest under this procedure will be subjected to any detriment as a result. In the event that the employee believes they are being subjected to a detriment by any person within the Council, they 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>

### ***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 acknowledged by the employee raising the concern though that the investigation process itself may well reveal the source of the information and depending on the outcome, a formal witness statement by the individual may be required as evidence within a Court.

## ***Anonymous Allegations***

This policy is designed to encourage staff to put their names to allegations. Concerns expressed anonymously are much less powerful and more difficult to investigate, 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 an employee makes an allegation but it is not confirmed by the investigation, no action will be taken against them. If, however, there is reasonable evidence that an allegation has been made maliciously, or with the primary intent of personal gain, action will 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>

## ***Procedure***

The following procedure is to enable employees to raise a concern directly with the Council and for it to be addressed directly. Employees have the right to report a whistleblowing concern outside of the Council and this procedure if they so wish. This should be done by contacting the relevant external organisation and following their published procedure. A list of external contacts is given at the end of this policy.

### ***1. Raising a Concern***

Employees who have a whistleblowing concern should address their concern in writing to the Council's Chief Operating Officer or to the Devon Audit Partnership (internal audit). Employees who are members of a recognised trade union may also wish to approach their representative. The concern should be put in writing, giving clear details of the concern, using the proforma contained in Appendix 1 of this policy. The proforma can be emailed directly to the Chief Operating or to Audit using the following address:- [whistle.blowing@torbay.gov.uk](mailto:whistle.blowing@torbay.gov.uk) (check if still in use).

Employees who are unable to address their concerns in writing can also contact the Audit Whistleblowing Hotline on Tel: 01803 207407.

## ***2: How the Complaint will be Dealt With***

The Chief Operating Officer or Audit will notify the Finance, Ethics and Probity Group of the matter in order for initial investigations to take place and recommendations for action. The Finance, Ethics and Probity Group is made-up of members from the Council's Finance, Human Resources, Audit and Legal Services departments, including the Council's Monitoring Officer. (For clarity, "The Group" refers to the Finance, Ethics and Probity Group).

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.

Within ten working days of a concern being received, the Chief Operating Officer will write to the employee:-

- Acknowledging that the concern has been received;
- Indicating how the matter will be dealt with;
- Telling the employee whether any initial enquiries have been made;
- Telling the employee whether further investigations will take place and if not, the reason for this;
- Give some indication of timescales.

Should the concern fall outside of the scope of this policy, the Chief Operating Officer will be informed by the Group and the employee will be advised of alternative courses of action to take, for example, to raise the complaint under one of the Council's other policies. If after initial investigation it becomes clear that the matter uncovers criminal activity or welfare/safeguarding concerns, these will be reported directly to the Police and/or other relevant external organisations for further action.

## ***3: How the Council will Respond***

Action recommended by the Finance, Ethics and Probity Group will be dependent on the nature of the concern raised and may:

- Be resolved by agreed action without the need for investigation
- Be investigated by management or by Audit or Human Resources (as appropriate)
- Be referred to the Police

- Form the subject of an independent inquiry
- Be referred to the external auditor

Should an investigation be necessary, the Group will appoint an appropriate investigation team from within the Council. The investigation will be dealt with as expediently as possible with an estimated timescale for completion to be provided to the individual at the start by the Group.

Where the employee is called to an investigation meeting, they may be accompanied by a Trade Union representative or work colleague, providing that they will assure confidentiality.

Following the outcome of the investigation process, the Group will inform the Chief Operating Officer of the outcome and an appropriate course of action will be agreed.

The Chief Operating Officer will put the formal response in writing to the individual at the earliest opportunity.

The employee 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.

There is no further recourse under this policy, however, should the employee wish to pursue the matter further, they have the right to report their concerns to an external organisation or one of those listed at the end of this policy.

### ***Counselling Service and Support***

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.

### ***Monitoring of the Policy***

The policy will be monitored by the Finance, Ethics and Probitry Group, who have overall responsibility for the maintenance and operation of this policy. The Group will maintain a record of concerns raised and the outcomes (in a form which does not endanger confidentiality) and will report as necessary to the Audit Committee.

## ***Equality Statement***

This policy applies equally to all Council employees, as above, regardless of their age, disability, sex, sexual orientation, race, religion or belief, gender reassignment, pregnancy and maternity, marriage and civil partnership. Care will be taken to ensure that no traditionally excluded groups are adversely impacted in implementing this policy. Monitoring will take place to ensure compliance and fairness.

## ***Raising a Complaint outside of the Council***

If an employee wishes to 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 Local Government Ombudsman who will also advise on ways to proceed.

(Local Government Ombudsman Local Government Ombudsman Advice line:- 0300 061 0614)

[www.lgo.org.uk](http://www.lgo.org.uk)

The Government has produced a document “**Blowing the Whistle to a Prescribed Person – List of Prescribed people and Bodies**”, produced in February 2013. It lists the appropriate organisations to handle whistleblowing complaints and should be referred to for up-to-date advice and guidance about who to contact:-

[https://www.gov.uk/government/Blowing\\_the\\_whistle\\_to\\_a\\_prescribed\\_person\\_-\\_list\\_of\\_prescribed\\_bodies\\_or\\_persons\\_1\\_.pdf](https://www.gov.uk/government/Blowing_the_whistle_to_a_prescribed_person_-_list_of_prescribed_bodies_or_persons_1_.pdf)

### **Other contacts:-**

Audit Commission (External Audit) for England and Wales Tel: 020 7828 1212

[www.audit-commission.gov.uk](http://www.audit-commission.gov.uk)

Public Disclosures Hotline Tel: 0845 0522 646

Devon and Cornwall Police Tel: 101

[www.devon-cornwall.police.uk](http://www.devon-cornwall.police.uk)

# WHISTLEBLOWING REPORTING FORM

This form is to be used for report a concern under Torbay Council’s Whistleblowing policy and procedure. The information given on this form will be treated in the strictest confidence.

<b>Description of the concern</b> Please include: <ul style="list-style-type: none"> <li>• Dates of incidents</li> <li>• Who was involved</li> <li>• Why this is a concern</li> <li>• What the result was</li> </ul>		<ul style="list-style-type: none"> <li>• Whether there were any other witnesses</li> <li>• Whether you have tried to raise this with anyone previously</li> <li>• What the result was</li> </ul>	
<p style="text-align: center; font-size: 48px; opacity: 0.3; transform: rotate(-30deg);">DRAFT</p>			
<p><b>You are encouraged to give your name to this report. Complaints raised anonymously are much harder to investigate but will be considered at the discretion of the Finance, Ethics and Probity Group.</b></p>			
<b>Name:</b>		<b>Business Unit/Service:</b>	
<b>Address:</b>		<b>Contact Tel number:</b>	
<b>Date:</b>		<b>Email address:</b>	
<b>Signature:</b>			

**Send this form by post or by email to EITHER:-**

- Devon Audit Partnership, c/o Town Hall, Castle Circus, Torquay **OR to**
- Chief Operating Officer, Town Hall, Castle Circus, Torquay

**Initial Investigation of Concern – to be completed by Council**

Complaint received by:

Date:

**Action taken:**

**Print:**

**Signature:**

**Date:**