

Whistleblowing Policy

Date August 2024

This document can be made available in other languages and formats.
For more information please contact hrpolicy@torbay.gov.uk

Contents

Introduction 2

 Aims of the Policy 2

 Scope 2

What is Whistleblowing? 2

 What is the difference between making a complaint and blowing the whistle?..... 3

Safeguarding Whistleblowers 4

 Confidentiality 4

 Anonymous Allegations 5

 Untrue Allegations 5

Procedure 5

 1. Raising a Concern..... 5

 2. How the Complaint will be Dealt With..... 6

 3. How the Council will respond 6

Counselling Service and Support..... 7

Monitoring of the Policy 7

Equality Statement..... 7

Raising a Concern outside of the Council..... 7

Employees Raising a Concern who feel they have been treated unfairly 8

Other contacts: - 8

History of Policy Changes..... 8

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 aims to provide a safe and effective working environment, where individuals can raise genuine concerns about malpractice or unlawful conduct in the workplace. This policy is intended to empower employees to raise such concerns at an early stage and in the correct way. The Whistleblowing Policy is to be used for reporting concerns where the whistleblower 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 all within the scope of this policy how to appropriately take issues of concern forward, using the correct policies and procedures;
- Provide a clear procedure for all within the scope of this policy to raise concerns and receive feedback on any action taken;
- Ensure that confidentiality of the disclosure is maintained unless safeguarding concerns or criminal activity are disclosed;
- Reassure whistleblowers 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, apprentices/trainees and volunteers who wish to raise whistleblowing concerns, which they can do in line with this policy. Schools have their own local arrangements.

Separate arrangements exist for Elected Members which are covered within the 'Code of Conduct for Members' and 'Local Protocol on Member and Officer Relations' (available from Governance Support), provided they do not conflict with this Whistleblowing Policy or potentially prejudice a criminal or other investigation.

Complaints relating to Councillors can be addressed through the Members Code of Conduct, link as follows: -

[Councillors' Behaviour, Interests and Standards Committee - Torbay Council.](#)

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. The disclosure must be made in the public interest, i.e. a public interest disclosure is a disclosure by a worker concerning a wrongdoing on the part of their employer. It should be noted that in most cases if the

whistleblower goes to the media they will lose their whistleblowing law rights as explained on the Gov.UK website: <https://www.gov.uk/whistleblowing/who-to-tell-what-to-expect>

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 defines 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 where any of the following is being, has been, or is likely to be, committed:

- a criminal offence for example fraud.
- 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
- 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-workers, contractors, partner agencies, agency workers, apprentices/trainees and volunteers.

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 (including children or adults who are vulnerable), 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. They are 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. The Grievance Procedure is a process for use by employees; where an employee has an individual complaint relating to their employment, for example, their contract of employment, pay, conditions, they should raise this under the Council's Grievance procedure. The Acceptable Behaviour Policy is also for use by employees for complaints regarding unacceptable

behaviour or discrimination. It also covers contractors, agency staff and anyone else engaged to work at the Council. Agency workers will be covered by this policy and are expected to adhere to it, however, reference should also be made to their own policies and procedures - please see Agency Induction Handbook.

Both policies are available on [MyView](#) in My documents, Policies and Guidance Section 2 – Conduct and Performance

For individuals with no access to MyView email: hrpolicy@torbay.gov.uk

Individuals not engaged in work at the Council should use the corporate complaints procedure available from the Council [website](#)

<https://www.torbay.gov.uk/council/policies/corporate/complaints-procedure/>.

Some examples showing the differences are as follows: -

Grievance	Protected disclosure
An employee's complaint about the type of work that they are being asked to do. For example, acts or omissions of non-compliance.	A disclosure that an individual has been instructed to carry out actions that they genuinely believe to be illegal, e.g. to falsify tax returns
An employee's complaint that they have 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 they are 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.

Safeguarding Whistleblowers

In accordance with the law, the Council undertakes that no individual 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 individual believes they are being subjected to a detriment by any co-worker, contractor, partner agency, agency worker, apprentice/trainee or volunteer they have the right to raise any concerns of harassment via the Council's Acceptable Behaviour Policy – For individuals with no access to MyView email hrpolicy@torbay.gov.uk

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 individual 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 and other whistleblowers to put their names to allegations, to promote openness and discourage a fear of victimisation. 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

Where an allegation is made but not confirmed by the investigation, no action will be taken against the whistle blower. If, however, there is reasonable evidence that an allegation has been made by an employee, 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 [MyView](#), in My Documents, Policies and Guidance Section 2 – Conduct and Performance. If no access to MyView email: hrpolicy@torbay.gov.uk.

Procedure

The following procedure is to enable individuals to raise a concern directly with the Council and for it to be considered and subsequent action taken, where necessary. There remains a right to report a whistleblowing concern outside of the Council and this procedure, where there is a wish to do so. 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

Whistleblowing concerns should be addressed in writing to the Council's Director of Finance / Councils most Senior 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 reporting form found on MyView, MyDocuments, Section 2 Conduct and Performance Management, 2.20a. Whistleblowing Reporting Form. The reporting form can be emailed to the Whistleblowing email address as follows: whistle.blowing@torbay.gov.uk

Where it is not possible to address concerns in writing, contact can be made using the Audit Partnership whistleblowing number or the Torbay Council number Tel: 01803 207407.

2. How the Complaint will be Dealt With

The Chairperson of the Finance, Ethics and Probity Committee 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 Chairperson of the Finance, Ethics and Probity Committee 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 Chairperson of the Finance, Ethics and Probity Committee will write to the complainant: -

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

Following the Group's initial investigation should the Group consider that the Whistleblow falls outside of the scope of this policy, the complainant 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. The complainant will be advised of this course of action and the Council shall take no further action in respect of the complaint unless requested by the Police or external organisation the complaint has been referred to.

3. How the Council will respond

Following its initial investigation, the action recommended by the Group will be dependent on the nature of the concern raised and may:

- Be resolved by agreed action without the need for further 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 whistleblower at the start by the Group.

Where an employee is called to an investigation meeting, they may be accompanied by a Trade Union representative or work colleague and such representative or colleague will be required to formally agree to any matters arising at that meeting being kept confidential.

Following the outcome of the investigation process, the Group will inform the Finance Director/most Senior Officer of the outcome and an appropriate course of action will be agreed.

The Finance Director/most Senior Officer will put the formal response in writing to the individual at the earliest opportunity.

The Whistleblower 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 Whistleblower 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 Whistleblower raising the concern does not suffer detrimental treatment as a result of raising a complaint.

The Council has a free and confidential Counselling Service and Employee Assistance Programme available to support employees. If you wish to access this service, please email wellbeing@torbay.gov.uk in confidence to be signposted to the most appropriate service.

Monitoring of the Policy

The policy will be monitored by the Finance, Ethics and Probity 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 Chair of the Audit Committee,

Equality Statement

This policy applies equally to all within the Scope outlined 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 Concern outside of the Council

If a whistleblower 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.

To register a new complaint with the Local Government & Social Care Ombudsman, the Whistleblower is encouraged to read the Ombudsman's step by step process for making a complaint which can be found on their website: -

(Local Government Ombudsman Local Government Ombudsman Advice line: - 0300 061 0614)
www.lgo.org.uk

The whistleblower may wish to seek their own independent legal advice before or throughout the process. The Government has produced a document "Blowing the Whistle to a Prescribed Person – List of Prescribed people and Bodies". 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/uploads/system/uploads/attachment_data/file/404330/bis-15-43-blowing-the-whistle-to-a-prescribed-person-list-of-prescribed.pdf

Employees Raising a Concern who feel they have been treated unfairly

You can take a case to an [employment tribunal](#) if you have been treated unfairly because you've blown the whistle. You can get further information from the [Advisory, Conciliation and Arbitration Service \(Acas\)](#), the whistleblowing charity [Protect, Citizens' Advice](#) or your trade union.

If you reported your concern anonymously, you may find it harder to argue that your unfair treatment was as a result of your whistleblowing.

You must raise any claim of unfair dismissal within 3 months of your employment ending.

You must notify Acas if you want to take your case to a tribunal.

Other contacts: -

- [National Audit Office](#)
- Public Disclosures Whistleblowing Hotline Tel: 020 7798 7999
- Devon and Cornwall Police Tel: 101
www.devon-cornwall.police.uk
- ACAS Tel: 0300 123 1100
<https://www.acas.org.uk/>
- [Protect – the Whistleblowing Charity \(protect-advice.org.uk\)](#) Tel: 020 3117 2520
- [Whistleblowing for employees: Gov.uk/whistleblowing](#)

History of Policy Changes

This policy was approved on 20th March 2013 by the Audit Committee. Previous versions of the policy were formally agreed by the Scrutiny Committee in August 1999 and reviewed in October 2006 and October 2008.

Date	Page	Details of Change	Agreed by:
28.2.08	All	Replacement of previous Redeployment, Reorganisation & Redundancy policy with 3 separate policies	TJCC 28.2.08
6.5.15	7,8	Updates to list of Prescribed Persons Link; update to 'Other Contacts'	For information only
December 2021	All	Updated onto new corporate template and new details of counselling service	
August 2024	Various	Updated contacts and review by FEP (Finance, Ethics and Probity Committee). New section added for employees who wish to raise a concern. Appendix reporting form, moved to separate template 2.20a.	For information only