

Section 4 - Anti-fraud and corruption - Whistleblowing policy

Anti-fraud and corruption strategy

Part 2 - Confidential reporting (Whistleblowing) policy

Updated June 2018.

1.0 Introduction

1.1 Whistleblowing is the raising of a concern, either within the workplace or externally, about a danger, risk, malpractice or wrongdoing or illegality which affects others. This can include:

- A criminal offence (e.g. fraud, corruption etc.) may have or has been committed;
- A miscarriage of justice has been or is likely to occur;
- Abuse / harassment of a service recipient or council employee is taking place. Note where a child or vulnerable adult is the recipient of such treatment "Safeguarding" procedures could apply, please note these alternate procedures also adhere to the principles of this strategy.
 - For adult safeguarding contact 0161 253 5151
 - For child safeguarding (aged under 18), please contact 0161 253 5678
- Unethical conduct and actions deemed unprofessional or inappropriate; This could include for example, Officers or Councillors attempting to use their position to influence political or professional practices or decisions, or could include breaches of regulations requiring School Governors to 'act with integrity, objectivity and honesty and in the best interests of the school' and breaches of the 'Nolan Principles' which are the basis of ethical standards expected of public office holders. (Appendix A);
- public funds are being used in an unauthorised manner;
- the environment has been or is likely to be damaged;
- the council's own rules have been or are being breached;
- abuse (e.g. physical or verbal) of a service recipient or council employee is taking place;
- discrimination towards a service recipient, (e.g. disability, race, gender).

1.2 The Nolan Committee on Standards in Public Life made clear recommendations that local authorities should adopt 'whistleblowing' procedures, and the Public Interest Disclosure Act (PIDA) 1998 (and subsequent Enterprise and Regulatory Reform Act 2013) gave protection to 'whistleblowers' who are treated unfairly.

1.3 Additionally, the Whistleblowing Commission, established in 2013 by whistleblowing charity Public Concern at Work, has developed a Code of Practice

for effective whistleblowing arrangements. Bury Council's Whistleblowing Policy complies with this Code of Practice.

1.4 Employees are often the first to realise that there may be something seriously wrong within their workplace or within a Department of the Council itself. However, they may choose not to express their concerns if they feel that by speaking out it would be disloyal to their line manager(s), colleagues or to the Council, or if they fear harassment or victimisation. In such circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

1.5 The Council's Whistleblowing Policy is a vital element of our governance arrangements. The Council is committed to the highest possible standards of honesty, openness, probity and accountability and will not tolerate malpractice or wrongdoing. In line with that commitment, employees and others with serious concerns about any aspect of the Council's work (including activities within schools or by voluntary staff, and Members), are encouraged to voice them. In so doing it is recognised that in certain cases they will have to proceed on a confidential basis.

1.6 This policy applies to all staff working for the Council, both full and part-time, temporary and casual including those that are based within the Council's schools and within aided and foundation schools. It also covers Council Members, School Governors and agency and contractors' staff. References to 'employees' within the Policy covers all of these categories.

1.7 This policy makes it clear that employees should be encouraged and enabled to raise serious concerns within the Council without fear of reprisal, rather than overlooking a problem or blowing the whistle outside. It is intended to help build an environment of openness within the Council.

1.8 If you are not a Council employee you can still contact the Council to report any concerns or disclosures over wrongdoing and these will be treated in the same way. Unlike disclosures made by employees, protection under PIDA law does not extend to disclosures made by members of the public. Please see separate document "Whistleblowing Arrangements for the General Public" on the Bury Council website.

1.9 The policy has been subject to local consultation with appropriate trades unions and professional associations and has their support.

2.0 Aims and scope of this policy

2.1 The policy aims to:

- provide an avenue for all those to whom the policy applies to raise concerns and receive feedback on any action taken;

- allow them to take the matter further if they are dissatisfied with the response received;
- Reassure them that they will be protected from reprisals or victimisation for confidential reporting an incident where the employee has a reasonable belief that the matter is in the public interest. Such an act will be covered by "protected disclosure".

(Definition of protected disclosure - a source of information that the worker reasonably believes tends to show malpractice. It does not have to be true, as long as the worker reasonably believes it to be true).

The Enterprise and Regulatory Reform Act 2013 goes on to state that the disclosure must "in the reasonable belief of the worker making the disclosure" be "made in the public interest".

2.2 There are existing procedures in place for employees to legitimately complain about harassment, violence and aggression, discrimination and instances where they feel that they have a grievance. The Confidential Reporting Policy is intended to cover concerns that fall outside the scope of other procedures.

2.3 Part IV of the Employment Rights Act 1996 - The Public Interest Disclosure Act - sets out a framework for staff to make disclosures about various categories of wrongdoing, provided they reasonably **believe it to be in the public interest** to do so:

- a criminal offence
- failure to comply with statutory or legal obligations
- improper or unauthorised use of public or other funds
- a miscarriage of justice
- endangering health and safety
- damage to the environment
- maladministration, misconduct or malpractice
- deliberate concealment of any of the above

2.4 The disclosure will be protected if the member of staff discloses:

- a) in course of obtaining legal advice;
- b) to the employer;
- c) in certain circumstances, to a Minister of the Crown;
- d) to a 'prescribed person', reasonably believing that the information and any allegation contained within it is substantially true. The Secretary of State (for Business, Innovation and Skills) prescribes by list both the identity of the prescribed person (usually regulatory body) and its remit;
- e) to any person or body provided that a number of detailed conditions are satisfied. Those conditions include a requirement that the worker does not make the disclosure for purposes of personal gain and a requirement that it is reasonable to make the disclosure in the circumstances. A further section makes provision for a disclosure of an exceptionally serious failure to any person or body.

2.5 The Public Interest Disclosure Act makes it unlawful for an employer to dismiss or subject a worker to a detriment for having made a 'protected disclosure' of information. The protection provided by the Act is not subject to any qualifying period of employment and so is referred to as a 'day one' right in employment law. By contrast under ordinary unfair dismissal, there is a two year qualifying period.

2.6 Alternatively, the disclosure may be related to any breach of the Council's Standing Orders, Financial Regulations, policies or agreed procedures, including those relating to Governing Bodies.

2.7 The overriding concern should be that it would be in the public interest for malpractice to be corrected and, if appropriate, sanctions applied.

3.0 How to raise a concern

3.1 As a first step, you should normally raise concerns with your immediate manager or their line manager. This may include Head Teachers, Chairs of Governing Bodies or other senior Officers of the Council. However, much depends on the seriousness and sensitivity of the issues involved, and who you think is involved in the malpractice. If, for example, you believe that your own line manager or supervisor is involved, then you may prefer to approach a manager or supervisor from another unrelated service. You may also contact your trade union, departmental HR team or corporate HR.

3.2 In any event you may also approach one of the following Officers, in confidence, to raise a specific concern or to obtain advice and guidance on how matters of concern may be pursued:

- **Chief Executive -**
Geoff Little, Telephone: 0161-253 5102
- **Section 151 Officer -**
Mike Woodhead, Telephone: 0161- 253 7864
- **Interim Council Solicitor and Monitoring Officer -**
Janet Witkowski, Telephone: 0161-253 5219
- **Head of Financial Management / Chief Internal Auditor -**
Andrew Baldwin, Telephone: 0161-253 5034
- **Assistant Director of Resources and Regulation (HR and OD) -**
Tracy Murphy, Telephone: 0161 253 7775

3.3 Alternatively, you can call the dedicated Whistleblowing telephone number on 0161 253 6446 or email: whistleblowing@bury.gov.uk.

3.4 You may also take the matter outside the Council to one of the bodies referred to in section 6.

3.5 Whilst concerns are best raised in writing they can also be expressed verbally through a telephone call. Where a concern is expressed verbally an employee can also ask for a meeting with an appropriate person.

3.6 In any event, as much information as possible should be given and this should include:

- the background to the concern;
- names of individuals, dates and places where applicable;
- the reasons why there are concerns.

3.7 The earlier you express the concern, the easier it is for action to be taken.

3.8 Although you are not expected to prove the truth of an allegation, you will need to demonstrate to the person contacted that there are sufficient grounds for your concern.

3.9 An employee making a complaint about their contract of employment should not use this policy but refer to the grievance procedures.

3.10 We aim to encourage openness and will support anyone who raises a genuine concern under this policy. Support can be through various means, for example counselling, coaching and mentoring.

4.0 How the Council will respond

4.1 Any Officer that receives a concern must make a full written note of the points raised and then pass on the concern to one of the Officers listed in paragraph 3.2.

4.2 Careful consideration will then be given to the matter and to the action to be taken depending upon the nature of the concern. In order to protect individuals and the Council, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take.

4.3 The action taken by the Council will depend on the nature of the concern. The matters raised may:

- be investigated internally (see paragraph 4.4 below)
- be referred to the Police
- be referred to KPMG (external auditor)
- form the subject of an independent inquiry.

4.4 Because of the specific responsibilities of Governing bodies, concerns relating to schools will be the subject of separate investigatory procedures. These may involve the Head Teacher of the relevant school, the Chair of the Governing Body (in conjunction with the Director of Learning), and one of the Officers referred to in paragraph 3.2.

4.5 Concerns or allegations that fall within the scope of specific procedures will normally be referred for consideration under those procedures. Allegations relating to child abuse for example will be dealt with in accordance with the Bury Safeguarding Children's Board Confidential Reporting (Whistle-blowing) policy.

4.6 Some concerns may be resolved by agreed action without the need for investigation.

4.7 Within ten working days of a concern being received, the Council will write to you:

- acknowledging that the concern has been received;
- indicating how it proposes to deal with the matter;
- giving an estimate of how long it will take to provide a final response, telling you whether any initial enquiries have been made, and telling you whether further investigations will take place, and if not, why not.

4.8 The amount of contact you have with the Officers considering the issues will depend on the nature of the matters raised, the potential difficulties involved, and the clarity of the information provided. If necessary, further information will be sought from you in a discreet manner.

4.9 When any meeting is arranged you can be accompanied by a trade union representative, an official employed by a trade union, or by a companion who is a fellow worker, if you wish. It is your responsibility to make these arrangements.

4.10 The meeting can be off site if requested.

4.11 The persons investigating the concerns will produce a written report that:

- outlines the complaint;
- details the investigation process;
- gives the outcome of the investigation;
- details recommendations where appropriate.

4.11 The Council accepts that employees need to be assured that the matter has been properly addressed. Thus, subject to legal constraints and confidentiality issues, you will receive information about the outcomes of any investigations.

4.12 If the person who expressed the concern is not satisfied with the outcome they have a right to take matters further as explained in section 6 of this policy.

4.13 The Council will take steps to minimise any difficulties that you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings, the Council will advise you about the procedure.

5.0 Safeguards

Harassment or Victimisation

5.1 The Council recognises that the decision to report a concern is not an easy one to make, not least because of the fear of reprisal from those reported for the malpractice. The Council will not tolerate harassment, bullying or victimisation

based upon race, religion or belief, gender, gender reassignment, sexual orientation, disability and age from employees, managers or governors, and will take appropriate action, including the application of the Disciplinary Procedure, to protect an employee who raises a concern that they reasonably believe to be "in the public interest".

5.2 In accordance with Part IV of the Employment Rights Act 1996 - The Public Interest Disclosure Act - an employee cannot be dismissed or selected for redundancy as a result of making a disclosure that they reasonably believe to be "in the public interest". In addition, an employer cannot withhold a pay rise, object to a promotion or not give training. Other examples that will not be tolerated where a member of staff is disadvantaged because they blew the whistle could include (but is not limited to) ostracism, closer monitoring, blocking access to resources, unrequested re-assignment or re-location, demotion, suspension, failure to provide an appropriate reference and failure to investigate subsequent concern.

5.3 This does not mean that if an employee is already the subject of disciplinary or redundancy procedures that those procedures will be halted as a result of confidential reporting.

Confidentiality

5.4 The Council will respect confidentiality and all steps will be taken to ensure that confidentiality is maintained throughout the process. However, it must be appreciated that the investigation process may reveal the source of the information. Any statement made by you may be required as part of the evidence.

Anonymous Allegations

5.5 The Council would encourage employees to put their name to allegations because concerns expressed anonymously are much less powerful. However, the Council also recognises that some employees would not wish to do this. Where a concern is expressed anonymously it will be considered at the discretion of the Council and 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
- the likelihood of confirming the allegation from attributable sources.

Untrue Allegations

5.6 If an employee makes an allegation that they reasonably believe to be "in the public interest" but it is not confirmed by the investigation, no action will be taken. If however, an employee makes a malicious or vexatious allegation, disciplinary action may be taken.

6.0 How the matter can be taken further

6.1 This policy is intended to provide you with an avenue to raise concerns within the Council, and the Council hopes you will be satisfied with the response to your concern. If you are not satisfied with the response, please indicate this to the Chief Executive.

If you feel it is right to take the matter outside the Council, the list below shows possible contact points:

- any Member of the Council
- any Member of the Governing Body (in the case of any issue relating to a school)
- external auditor (KPMG) (telephone 0161-246 4000)
- relevant trade unions, professional bodies or regulatory organisations e.g. UNISON, Ofsted, Care Quality Commission
- your solicitor
- the Police

6.2 If, at any stage, you are unsure whether to use this procedure, or decide that you need independent advice, you may seek advice from the independent charitable body 'Public Concern at Work'. This organisation operates a help-line and a mediation service and can be contacted on 0207 404 6609. They can give you free, confidential advice at any stage of the process. For further information visit Protect - Speak up, stop harm (<https://www.pcaw.org.uk/>).

6.3 If you do take the matter outside the Council, then you need to ensure that you do not disclose confidential information, or that disclosure would be privileged. You can check this with one of the contact points listed in section 3.2.

6.4 If concerns are raised through professional bodies, or trade unions, then it is expected that the professional body/trade union representatives will act in accordance with this policy, and with the Public Interest Disclosure Act, with regard to the information disclosed. Such a disclosure made by an employee will not be treated as grounds for disciplinary proceedings.

7.0 Data protection and FOI

7.1 The Freedom of Information Act 2000 gives a general right of access to all types of recorded information held by Public Authorities. As such the Council often receives requests for information under the Freedom Of Information Act.

7.2 The Council has a legal obligation to provide the information unless it falls under one of the exemptions of the Act.

7.3 The Freedom of Information Act contains exemptions which may be applicable to permit the withholding of information identifying the whistleblower, including:

- Section 40 Personal Data
- Section 41 Information which, if disclosed, would give rise to an actionable breach of confidence.

7.4 Many people making a disclosure to the Council will wish to protect their identity and the Council will always seek to protect the identity of individuals during the course of progressing an investigation. If the Council receives a request for information identifying a whistleblower, the Council will contact the whistleblower to seek their views beforehand and will, wherever possible, seek to comply with those views.

7.5 The principle of maintaining confidentiality should also be applied to the identity of any individual who may be the subject of a disclosure.

7.6 The Council will ensure that our handling of concerns meets the requirement of the Data Protection Act 1998 and the Freedom of Information Act 2000.

8.0 The Responsible Officer

8.1 Internal Audit will maintain a central record of all whistleblowing referrals made under this policy and monitor the outcome of these cases. All records will be held securely and confidentially.

8.2 As such, details of any allegation should be reported to Internal Audit by the receiving manager on receipt. Internal Audit will log and allocate each case a reference number whether or not Internal Audit are involved in the investigation work. The outcome of the investigation should be notified to Internal Audit by the Investigating Officer.

8.3 The records held by Internal Audit will be used to analyse the impact and effectiveness of the arrangements in place in statistical terms and records held in HR sections may be subject to review. The detailed case records form part of the process of reporting back to Members on the effectiveness and outcomes of the Policy and form the record of actions taken in the case of any matters raised under the Public Interest Disclosure Act. The information will be referred to for monitoring purposes and periodic assurance reports provided to the Audit Committee by the Head of Financial Management as part of this process.

8.4 A whistleblowing record sheet (Appendix B) should be used to record a summary for each case. A copy should be sent to Internal Audit and one retained with the investigation paperwork on completion.

8.5 The Chief Executive has overall responsibility for the maintenance and operation of this policy, and monitoring the effectiveness of the Council's Whistleblowing Policy and Process. The Standards Committee has an overview of the Whistleblowing Policy.

9.0 Training and awareness

9.1 Chief Officers and Heads of Service are responsible for ensuring that their employees are aware of the whistleblowing policy and process and that any training needs are addressed which may arise from the application of the policy. Raising awareness of the Council's Whistleblowing Policy should form part of the induction training for all employees and should be addressed as refresher training for all employees.

9.2 Employees have a responsibility to ensure that they are aware of and understand the Council's policy in relation to Whistleblowing.

10.0 Review

10.1 This policy will be subject to annual review in consultation with the appropriate trades unions. A summary of concerns raised under this policy will be prepared on an annual basis and shared with the trades unions during the review.

Appendix A

Seven Nolan principles

The following are the Seven Nolan Principles underpinning standards for Public Life.

The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public services. The principles also have application to all those in other sectors delivering public services:

1. **Selflessness:** Holders of public office should act solely in terms of the public interest.
2. **Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
3. **Objectivity:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. **Accountability:** Holders of public office are accountable to the public for their decisions and actions and must admit themselves to the scrutiny necessary to ensure this.
5. **Openness:** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. **Honesty:** Holders of public office should be truthful.
7. **Leadership:** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Source: Gov.uk - The Seven Principles of Public Life
(<https://www.gov.uk/government/publications/the-7-principles-of-public-life>).