



West Lothian
Council

**Disclosure of Information
by Employees
(Whistleblowing)
Procedure**



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DATA LABEL: PUBLIC



**DISCLOSURE OF INFORMATION BY EMPLOYEES
(Whistleblowing)**

PROCEDURE

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DISCLOSURE OF INFORMATION BY EMPLOYEES (Whistleblowing)

PROCEDURE

(Covers ALL employees, Agency Workers, Trainees, Self Employed Workers)

1. PURPOSE

- 1.1 The Disclosure of Information by Employees (Whistleblowing) Policy is a statement of the council's commitment to good governance. The Policy is designed to help create an environment in which employees understand their responsibilities, and managers can demonstrate their accountability.
- 1.2 The policy encourages workers to raise concerns about wrongdoing or malpractice within the organisation and is supported by this procedure that advises employees how to raise a concern responsibly within the council.

2. LEGAL CONTEXT

- 2.1 The Public Interest Disclosure Act 1998 (as amended) is the key legal instrument that underpins the whistleblowing legislation.
- 2.2 Employees raising concerns of wrongdoing or malpractice are afforded protection under law from unfair dismissal, victimisation and harassment. However, protection is conditional on disclosures being made to the appropriate person and the employee honestly and reasonably believing that the allegation and the information on which it is based, are true and '*in the public interest*'.
- 2.3 The phrase '*in the public interest*' is not defined in statute and is interpreted by developing case law. Concerns raised in the public interest however, will typically be characterised by one or more of the acts or omissions listed in Paragraph 3.1 below.

3. REPORTING CONCERNS - GENERAL

- 3.1 The disclosure of information in the public interest involves the reporting of certain acts or omissions committed by a single individual, a number of individuals in the council or external contractors working for the council. Acts or omissions which give cause for serious concern broadly fall into two categories i.e. wrongdoing in terms of a breach of the criminal or civil law, or maladministration which may amount to a breach of the civil or criminal law.

Examples of such acts or omissions:

- a criminal offence such as the theft of money, materials and equipment or fraud (false or inflated expenses claims/bills for goods not delivered etc);
- a failure to comply with a legal obligation;
- corruption or bribery;
- negligence or abuse of customers or clients;

- a miscarriage of justice;
- a hazard that may be a danger to the health and safety of an individual;
- damage to the environment; and
- the deliberate concealment of information relating to any of the above categories.

These examples are not mutually exclusive (i.e. an employee may be aware of a health and safety failure that is also a criminal offence).

- 3.2 Under the terms of this procedure an employee can report such matters on a confidential basis to the council. If an employee is unsure whether a particular concern falls into one of the above categories, they should contact their line manager, other appropriate manager, or the council's Monitoring Officer. The Head of Corporate Services acts as the council's Monitoring Officer.

4. REPORTING PROCEDURE

- 4.1 Employees are encouraged wherever possible to raise concerns within the council in the first instance following the process outline at Appendix 1 (Internal Disclosures).

Internal Disclosures

- 4.2 Internal disclosures are protected provided the disclosure is made in in the public interest and it relates to at least one of the acts or omissions detailed in Paragraph 3.1 above.

Reporting Options

- 4.3 An employee wishing to make a disclosure should in the first instance contact the Whistleblowing Hotline Number/e-mail inbox or use the on-line form which can be found here:

<https://intranet.westlothian.gov.uk/article/11264/Whistleblowing>

This facility is operated by officers of the Audit, Risk & Counter Fraud Unit who will log incoming disclosures.

- 4.4 Alternatively employees can notify their line manager either in person or in writing. An employee, who feels unable to approach their immediate line manager, should report the matter to a more senior manager at the next level in the management structure. Managers should gather as much information from the employee as possible and record on a Whistleblowing Complaints Record Form (Appendix 2).
- 4.5 An employee who feels unable to make the disclosure to any person within their own service area and who does not wish to use the Hotline, should raise their concerns with the council's Monitoring Officer directly, either verbally or in writing.

Logging & Recording

- 4.6 Irrespective of which of the three options set out above in 4.3 to 4.5 are used, the Audit, Risk & Counter Fraud Unit **must be notified of all internal disclosures** so that they can be logged and recorded on a central database. In this regard, all such disclosures must be forwarded to the Unit **within 2 working days of their receipt.**

- 4.7 On receipt of a verbal or written disclosure, the employee making the disclosure will be advised of the next steps in the Whistleblowing procedure and will be given indicative timescales for the matter to be progressed.

Confidentiality and Anonymity

- 4.8 All whistleblowing complaints are confidential and will be treated with confidence throughout the process. It is important that confidentiality is maintained by all parties to ensure that the matter can be dealt with appropriately to avoid prejudice and to protect individual rights. However, depending on the nature of the allegation, it may not be possible to effectively investigate a whistleblowing disclosure and fully preserve anonymity.

Assessment of Disclosure

- 4.9 The Audit, Risk & Counter Fraud Unit will conduct a preliminary assessment of the disclosure and any supporting evidence provided. The purpose of the assessment will be to determine the nature and seriousness of the matter reported, for example does the matter involve;
- a) fraud, corruption or other financial regularities
 - b) child or vulnerable adult protection issues
 - c) a grievance or complaint of bullying and harassment that has been raised through the wrong procedure
- 4.10 The assessment process will be conducted with input from specialist advisory officers as appropriate who will assist in determining the most appropriate procedure and investigatory process that should be followed. In this regard, the HR Services Manager should be consulted where the complaint involves a breach of employment policies. The assessment stage should **take no longer than 3 working days**.
- 4.11 The Audit Risk and Counter Fraud Unit will report the outcome of the assessment to the relevant Depute Chief Executive, following which the matter will be progressed with due regard to the appropriate procedure subject to complying with the relevant procedural timescales and best practice guidance.

Child / Adult Protection Issues

- 4.12 Where the assessment indicates that the matter involves child or adult protection issues, the Depute Chief Executive must inform the council's Child/Adult Protection Officer as appropriate to initiate child/adult protection procedures before embarking on any further investigation.

Fraud, Corruption and other Financial Irregularities

- 4.13 Where the assessment indicates that the matter involves Fraud, Corruption or other Financial Irregularities, the Depute Chief Executive will refer the matter back to the Audit, Risk and Counter Fraud Unit for investigation under the Procedures for the Investigation of Suspected Fraud and Irregularities.

Other Disciplinary Matters

- 4.14 Where appropriate, the Depute Chief Executive will appoint a Nominated Officer who will instruct an investigation under the council's Disciplinary Procedures.

Grievances or Complaints of Bullying and Harassment

- 4.15 Where the assessment determines that the matter has been incorrectly raised as a Whistleblowing disclosure, the Depute Chief Executive will refer the matter to the relevant Head of Service to be progressed under the correct employment policy and procedure.

Notifying the Outcome of the Assessment

- 4.16 Following assessment of the matter, the relevant Depute Chief Executive will notify the employee who made the disclosure that either:
- no action is to be taken and giving the reason(s) for that decision; or
 - the matter is to be investigated under appropriate procedures and they may be required to provide a witness statement.

5. OTHER DISCLOSURES

- 5.1 Although employees are encouraged wherever possible to raise concerns within the council in the first instance, there may be good reasons why they feel that concerns of malpractice cannot be raised and addressed internally.

Disclosures to Prescribed Persons and Regulatory Bodies

- 5.2 A regulatory body is an organisation that sets standards of professional conduct, safety, law etc. and has powers to investigate and take appropriate disciplinary or other regulatory action (e.g. Health and Safety Executive, Revenue Scotland and the Financial Conduct Authority).
- 5.3 Disclosures to regulatory bodies will be protected if the disclosure is made in the public interest and the employee honestly and reasonably believes that the information and any allegation within it are true.
- 5.4 A disclosure to a regulatory body, which fulfils all the above conditions, will be protected whether or not the disclosure was first made to the council. A list of prescribed people and bodies can be found [here](#).

Disclosures to Police, Media, MSPs and Non-Prescribed Regulators

- 5.5 External disclosures are disclosures made to an external body such as the Police, media or MSP's and non-prescribed regulators.
- 5.6 Where an employee makes an external disclosure without first having made the disclosure to the council or to a regulatory body, the employee will be protected provided the disclosure meets the necessary requirements set out in 5.7 below.
- 5.7 Disclosures to external bodies will be protected only if the employee satisfies the following conditions:
- the disclosure is made in the public interest;
 - the employee reasonably believes that the information disclosed, and any allegation contained in it, are substantially true;
 - the employee has not made the disclosure for the purposes of personal gain;

- in all circumstances of the case it is reasonable to make the disclosure; and

In addition, at least one of the following further conditions must also apply:

- that at the time of the disclosure, the employee reasonably believed that they would be subjected to a detriment by raising the concern with their employer or a prescribed person;
- that where there is no prescribed person in relation to the relevant failure, the employee believed it likely that the evidence would be concealed or destroyed if the disclosure was made to their employer;
- that the employee had previously made a disclosure of substantially the same information to their employer or to a prescribed person.

Exceptionally Serious Failures

- 5.8 Exceptionally serious failures apply to very rare cases that are of extreme public concern.
- 5.9 Disclosure of an exceptionally serious failure made out with the council will be protected if it meets the test for disclosures to Prescribed Persons and Regulatory Bodies and is not made for personal gain. The disclosure must also be reasonable having particular regard to the identity of the person to whom it was made as specified within the Public Interest Disclosure Act 1998.
- 5.10 Further information on what may be defined as exceptionally serious can be obtained from the council's Monitoring Officer.

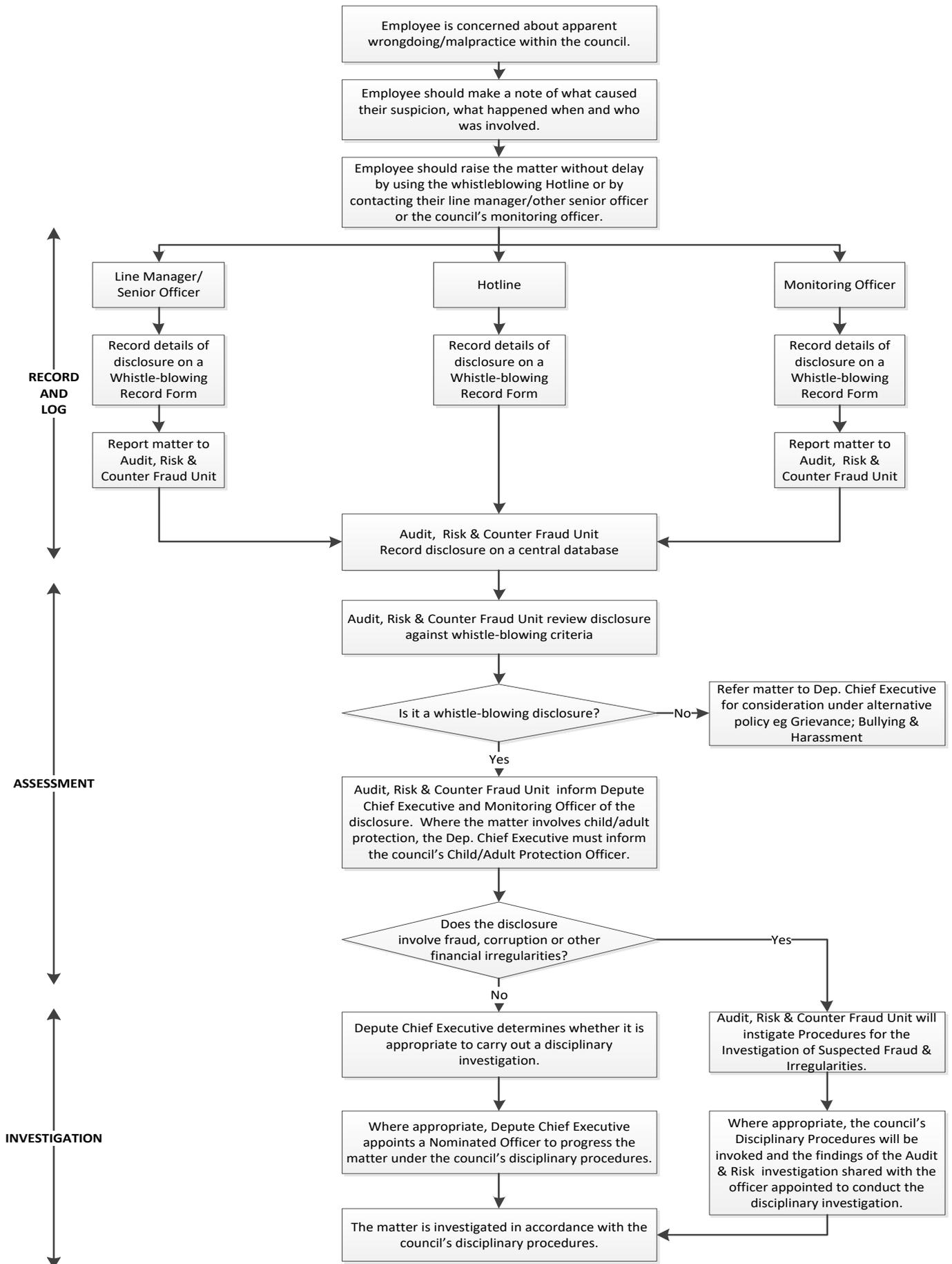
6. FALSE REPORTING

- 6.1 Where an employee makes a disclosure based on a genuine belief that something is wrong at a particular time, and it is subsequently demonstrated to be false or inaccurate, the employee will be informed of the discrepancy between their disclosure and the facts at hand. No further action will be taken, provided the council is satisfied that the employee had a genuine belief that such a situation should be disclosed.
- 6.2 Where an employee has deliberately and maliciously made a disclosure they know to be untrue or unfounded, they will be subject to the rules of the council's disciplinary procedure. A decision to invoke disciplinary procedures in such circumstances will be taken by the relevant Depute Chief Executive.

7. FURTHER INFORMATION

- 7.1 Further information on the application of this procedure may be obtained from Human Resources or from the council's Monitoring Officer. The Head of Corporate Services acts as the council's Monitoring Officer.

WHISTLEBLOWING DISCLOSURE PROCESS



WEST LOTHIAN COUNCIL
WHISTLEBLOWING COMPLAINT RECORD

CONTACT INFORMATION	
Name of Employee making the complaint:	
Service:	
Line Manager:	
Contact Telephone Number:	

Complaint received anonymously	<input type="checkbox"/>
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COMPLAINT CATEGORY	
• a criminal offence such as theft, fraud, bribery or corruption	<input type="checkbox"/>
• a failure to comply with a legal obligation or a council policy	<input type="checkbox"/>
• negligence or abuse of customers or clients	<input type="checkbox"/>
• a miscarriage of justice	<input type="checkbox"/>
• a hazard that may be a danger to the health and safety of an individual	<input type="checkbox"/>
• damage to the environment	<input type="checkbox"/>
• the deliberate concealment of information relating to any of the above	<input type="checkbox"/>
• other	<input type="checkbox"/>

EMPLOYEE(S) INVOLVED	
Name:	
Post Title:	
Service Area:	

Name:	
Post Title:	
Service Area:	

Name:	
Post Title:	
Service Area:	

DESCRIPTION OF COMPLAINT**RECORD DETAILS**

Name of Officer recording the complaint:	
Date complaint recorded:	
Date matter reported to Audit and Risk Management Team:	

OUTCOME

• matter to be investigated under the disciplinary procedures	<input type="checkbox"/>
• matter closed due to lack of information	<input type="checkbox"/>
• matter referred to an alternative procedure	<input type="checkbox"/>
• anonymous complaint not substantiated	<input type="checkbox"/>